

THIRTY-FOURTH REPORT  
Independent Monitor  
for the  
Maricopa County Sheriff's Office



Reporting Period – Third Quarter 2022  
Chief (Ret.) Robert S. Warshaw  
Independent Monitor  
February 27, 2023

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## Section 1: Introduction

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This is the thirty-fourth report issued in my capacity as the Court-appointed Monitor in the case of *Manuel de Jesus Ortega Melendres, et al., v. Paul Penzone, et al.* (No. CV-07-02513-PHX-GMS), and documents activities that occurred during the third quarter of 2022, July 1-September 30, 2022.

On May 13, 2016, the Court issued its Findings of Fact in the civil contempt proceedings that commenced in April 2015. This led to the issuance of a Second Supplemental Permanent Injunction/Judgment Order (Second Order) on July 20, 2016, significantly expanding the duties of the Monitor. Our reports cover the additional requirements of the Second Order while continuing to document MCSO's compliance efforts with the First Supplemental Permanent Injunction/Judgment Order (First Order) issued in October 2013. We provide summaries of compliance with both Orders separately, as well as a summary of MCSO's overall, or combined, compliance.

The compliance Paragraphs of the Second Order commence where the First Order ends, and they are numbered from Paragraph 160 through and including Paragraph 337. Not all are subject to our review.

The Second Order also delineates in great detail requirements in the areas of misconduct investigations, training, discipline and discipline review, transparency and reporting, community outreach, document preservation, and misconduct investigations involving members of the Plaintiffs' class. The Court granted the Monitor the authority to supervise and direct all of the investigations that fall into the latter category.

On November 8, 2022, the Court issued its Third Supplemental Permanent Injunction/Judgment Order (Third Order), adding additional requirements related to MCSO's Professional Standards Bureau (PSB) function. We will discuss the Third Order in further detail in our next quarterly status report.

As of the last reporting period, MCSO asserted Full and Effective Compliance with 125 Paragraphs of the First and Second Orders, as that term is defined in the First Order. After review, I agreed with MCSO's assertions. On September 30, 2022, MCSO asserted Full and Effective Compliance with 13 additional Paragraphs: Paragraphs 44, 80, 83, 190, 192, 198, 200, 202, 203, 206, 222, 243, and 272. On October 31, 2022, I agreed with all of MCSO's assertions, granting MCSO in Full and Effective Compliance with 138 total Paragraphs. (See Section 2 of this report.) MCSO retains the obligation to document that the Office remains in Full and Effective Compliance with the Paragraphs so designated.

Because of the COVID-19 pandemic, we once again conducted our October 2022 site visit remotely, in contrast to our regular practice of conducting onsite compliance visits. Our last in-person site visit was in January 2020. MCSO's compliance status with individual Paragraphs normally subject to in-person inspections will not be adversely impacted by any missed onsite reviews. We hope that circumstances change and we return to onsite visits. In the intervening period, if any adjustments need to be made to assess Paragraph compliance, we will consider additional options that might be available to us.

## Section 2: Methodology and Compliance Summary

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The Monitor's primary responsibility is to determine the status of compliance of the Maricopa County Sheriff's Office (MCSO) with the requirements of the requirements in the Order. To accomplish this, the Monitoring Team makes quarterly visits to Maricopa County to meet with MCSO's Court Implementation Division (CID) and other Office personnel – at Headquarters, in Patrol District offices, or at the office that we occupy when onsite. We also observe Office practices; review Office policies and procedures; collect and analyze data using appropriate sampling and analytic procedures; and inform the Parties and, on a quarterly basis, the Court, about the status of MCSO's compliance.

This report documents compliance with applicable Order requirements, or Paragraphs, in two phases. For Phase 1, we assess compliance according to whether MCSO has developed and approved requisite policies and procedures, and MCSO personnel have received documented training on their contents. For Phase 2 compliance, generally considered operational implementation, MCSO must demonstrate that it is complying with applicable Order requirements more than 94% of the time, or in more than 94% of the instances under review.

We use four levels of compliance: In compliance; Not in compliance; Deferred; and Not applicable. "In compliance" and "Not in compliance" are self-explanatory. We use "Deferred" in circumstances in which we are unable to fully determine the compliance status – due to a lack of data or information, incomplete data, or other reasons that we explain in the narrative of our report. We will also use "Deferred" in situations in which MCSO, in practice, is fulfilling the requirements of a Paragraph, but has not yet memorialized the requirements in a formal policy.

For Phase 1 compliance, we use "Not applicable" for Paragraphs where a policy is not required; for Phase 2 compliance, we use "Not applicable" for Paragraphs that do not necessitate a compliance assessment.

The tables below summarize the compliance status of Paragraphs tracked in this report.<sup>1</sup> During this reporting period, MCSO's Phase 1 compliance rate with the **First Order** remained the same as the last reporting period, at 99%. MCSO's Phase 1 compliance rate with the **Second Order** also remained the same as the last reporting period, at 100%.

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<sup>1</sup> The percent in compliance for Phase 1 is calculated by dividing the number of Order Paragraphs determined to be in compliance by the total number of Paragraphs requiring a corresponding policy or procedure. Paragraphs with the status of Deferred are included in the denominator, while Paragraphs with the status of Not Applicable are not included. Therefore, the number of Paragraphs included in the denominator totals 183 for Phase 1. The number of Paragraphs included in the denominator totals 208 for Phase 2.

During this reporting period, MCSO's Phase 2 compliance rate with the **First Order** increased by one percentage point from the last reporting period, to 79%. This number includes Paragraphs that we consider to be in compliance and those that are now in Full and Effective Compliance (FEC), as described above. (See below for the list of Paragraphs that are in Full and Effective Compliance.) During this reporting period, MCSO's Phase 2 compliance rate with the **Second Order** remained the same as the last reporting period, at 93%. This number also includes Paragraphs that we consider to be in compliance and those that are now in Full and Effective Compliance (FEC), as described above.

| <b>Thirty-Fourth Quarterly Status Report</b> |                |                 |
|--|----------------|-----------------|
| <b>First Order Summary</b>                   |                |                 |
| <b>Compliance Status</b>                     | <b>Phase 1</b> | <b>Phase 2</b>  |
| Not Applicable                               | 20             | 6               |
| Deferred                                     | 0              | 2               |
| Not in Compliance                            | 1              | 18              |
| In Compliance                                | 79             | 74 <sup>2</sup> |
| <b>Percent in Compliance</b>                 | <b>99%</b>     | <b>79%</b>      |

| <b>Thirty-Fourth Quarterly Status Report</b> |                |                  |
|--|----------------|------------------|
| <b>Second Order Summary</b>                  |                |                  |
| <b>Compliance Status</b>                     | <b>Phase 1</b> | <b>Phase 2</b>   |
| Not Applicable                               | 19             | 9                |
| Deferred                                     | 0              | 1                |
| Not in Compliance                            | 0              | 7                |
| In Compliance                                | 104            | 106 <sup>3</sup> |
| <b>Percent in Compliance</b>                 | <b>100%</b>    | <b>93%</b>       |

<sup>2</sup> This number includes those Paragraphs that are deemed in Full and Effective Compliance.

<sup>3</sup> This number includes those Paragraphs that are deemed in Full and Effective Compliance.

| MCSO's Compliance with the Requirements of the <b>First Order</b> ( <i>October 2, 2013</i> ) |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|--|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
|  | <b>Report 1</b>  | <b>Report 2</b>  | <b>Report 3</b>  | <b>Report 4</b>  | <b>Report 5</b>  | <b>Report 6</b>  | <b>Report 7</b>  | <b>Report 8</b>  | <b>Report 9</b>  | <b>Report 10</b> |
| <b>Phase 1</b>   | 4%               | 10%              | 44%              | 40%              | 51%              | 57%              | 61%              | 60%              | 67%              | 60%              |
| <b>Phase 2</b>   | 0%               | 0%               | 26%              | 25%              | 28%              | 37%              | 38%              | 39%              | 44%              | 49%              |
|  | <b>Report 11</b> | <b>Report 12</b> | <b>Report 13</b> | <b>Report 14</b> | <b>Report 15</b> | <b>Report 16</b> | <b>Report 17</b> | <b>Report 18</b> | <b>Report 19</b> | <b>Report 20</b> |
| <b>Phase 1</b>   | 63%              | 79%              | 88%              | 85%              | 85%              | 85%              | 85%              | 97%              | 97%              | 97%              |
| <b>Phase 2</b>   | 50%              | 57%              | 67%              | 62%              | 65%              | 64%              | 66%              | 77%              | 75%              | 78%              |
|  | <b>Report 21</b> | <b>Report 22</b> | <b>Report 23</b> | <b>Report 24</b> | <b>Report 25</b> | <b>Report 26</b> | <b>Report 27</b> | <b>Report 28</b> | <b>Report 29</b> | <b>Report 30</b> |
| <b>Phase 1</b>   | 96%              | 96%              | 96%              | 96%              | 96%              | 98%              | 98%              | 98%              | 98%              | 99%              |
| <b>Phase 2</b>   | 76%              | 77%              | 79%              | 82%              | 81%              | 78%              | 79%              | 77%              | 77%              | 79%              |
|  | <b>Report 31</b> | <b>Report 32</b> | <b>Report 33</b> | <b>Report 34</b> |                  |                  |                  |                  |                  |                  |
| <b>Phase 1</b>   | 99%              | 99%              | 99%              | 99%              |                  |                  |                  |                  |                  |                  |
| <b>Phase 2</b>   | 81%              | 80%              | 78%              | 79%              |                  |                  |                  |                  |                  |                  |

| MCSO's Compliance with the Requirements of the <b>Second Order</b> (July 20, 2016) |                  |                  |                  |                  |                  |                  |                  |                  |                  |                  |
|--|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|------------------|
|  | <b>Report 1</b>  | <b>Report 2</b>  | <b>Report 3</b>  | <b>Report 4</b>  | <b>Report 5</b>  | <b>Report 6</b>  | <b>Report 7</b>  | <b>Report 8</b>  | <b>Report 9</b>  | <b>Report 10</b> |
| <b>Phase 1</b>   | N/A              |                  |                  |                  |                  |                  |                  |                  |                  | 1%               |
| <b>Phase 2</b>   | N/A              |                  |                  |                  |                  |                  |                  |                  |                  | 43%              |
|  | <b>Report 11</b> | <b>Report 12</b> | <b>Report 13</b> | <b>Report 14</b> | <b>Report 15</b> | <b>Report 16</b> | <b>Report 17</b> | <b>Report 18</b> | <b>Report 19</b> | <b>Report 20</b> |
| <b>Phase 1</b>   | 10%              | 12%              | 72%              | 75%              | 77%              | 77%              | 78%              | 78%              | 99%              | 99%              |
| <b>Phase 2</b>   | 46%              | 60%              | 63%              | 66%              | 72%              | 75%              | 80%              | 81%              | 90%              | 89%              |
|  | <b>Report 21</b> | <b>Report 22</b> | <b>Report 23</b> | <b>Report 24</b> | <b>Report 25</b> | <b>Report 26</b> | <b>Report 27</b> | <b>Report 28</b> | <b>Report 29</b> | <b>Report 30</b> |
| <b>Phase 1</b>   | 100%             | 100%             | 100%             | 100%             | 100%             | 100%             | 100%             | 100%             | 100%             | 100%             |
| <b>Phase 2</b>   | 91%              | 90%              | 92%              | 93%              | 90%              | 91%              | 92%              | 90%              | 89%              | 91%              |
|  | <b>Report 31</b> | <b>Report 32</b> | <b>Report 33</b> | <b>Report 34</b> |                  |                  |                  |                  |                  |                  |
| <b>Phase 1</b>   | 100%             | 100%             | 100%             | 100%             |                  |                  |                  |                  |                  |                  |
| <b>Phase 2</b>   | 92%              | 93%              | 93%              | 93%              |                  |                  |                  |                  |                  |                  |

Below is the list of Paragraphs for which MCSO asserted Full and Effective Compliance, and the Monitor's response to MCSO's assertion.

| <b>Paragraph</b>                | <b>MCSO Asserted Full and Effective Compliance</b> | <b>Monitor's Determination</b> |
|---------------------------------|--|--------------------------------|
| 9                               | 12/28/18   | Concurred on 1/28/19           |
| 10                              | 12/28/18   | Concurred on 1/28/19           |
| 11                              | 12/28/18   | Concurred on 1/28/19           |
| 12                              | 12/28/18   | Concurred on 1/28/19           |
| 13                              | 12/28/18   | Concurred on 1/28/19           |
| 21                              | 6/22/20  | Concurred on 7/20/20           |
| 22                              | 12/16/20   | Did not concur on 1/15/21      |
| 23                              | 12/28/18   | Concurred on 1/28/19           |
| 24                              | 6/18/21  | Concurred on 7/19/21           |
| 26                              | 12/28/18   | Concurred on 1/28/19           |
| 27                              | 3/22/19  | Concurred on 4/22/19           |
| 28                              | 12/28/18   | Concurred on 1/28/19           |
| 29                              | 12/28/18   | Concurred on 1/28/19           |
| 30                              | 12/28/18   | Concurred on 1/28/19           |
| 31                              | 9/9/19   | Concurred on 10/2/19           |
| 34                              | 6/3/19   | Concurred on 6/25/19           |
| 35                              | 12/28/18   | Concurred on 1/28/19           |
| 36                              | 12/28/18   | Concurred on 1/28/19           |
| 37                              | 12/28/18   | Concurred on 1/28/19           |
| 38                              | 12/28/18   | Concurred on 1/28/19           |
| 39                              | 3/16/21  | Concurred on 4/16/21           |
| 40                              | 12/28/18   | Concurred on 1/28/19           |
| 42                              | 6/17/22  | Did not concur on 7/15/22      |
| 43 ( <i>first submission</i> )  | 12/16/20   | Did not concur on 1/15/21      |
| 43 ( <i>second submission</i> ) | 6/17/22  | Concurred on 7/15/22           |

| <b>Paragraph</b>                | <b>MCSO Asserted Full and Effective Compliance</b> | <b>Monitor's Determination</b> |
|---------------------------------|--|--------------------------------|
| 44 ( <i>first submission</i> )  | 12/16/20   | Did not concur on 1/15/21      |
| 44 ( <i>second submission</i> ) | 9/30/22  | Concurred on 10/31/22          |
| 45                              | 12/9/19  | Concurred on 1/6/20            |
| 46                              | 12/9/19  | Concurred on 1/6/20            |
| 47 ( <i>first submission</i> )  | 12/16/20   | Did not concur on 1/15/21      |
| 47 ( <i>second submission</i> ) | 6/17/22  | Concurred on 7/15/22           |
| 48                              | 4/1/22   | Concurred on 4/29/22           |
| 49                              | 4/1/22   | Concurred on 4/29/22           |
| 50                              | 4/1/22   | Concurred on 4/29/22           |
| 51                              | 4/1/22   | Concurred on 4/29/22           |
| 52                              | 6/18/21  | Concurred on 7/19/21           |
| 53                              | 6/18/21  | Concurred on 7/19/21           |
| 55                              | 12/28/18   | Concurred on 1/28/19           |
| 57                              | 12/16/20   | Concurred on 1/15/21           |
| 58                              | 6/22/20  | Concurred on 7/20/20           |
| 59                              | 12/28/18   | Concurred on 1/28/19           |
| 60                              | 12/28/18   | Concurred on 1/28/19           |
| 61                              | 12/9/19  | Concurred on 1/6/20            |
| 63                              | 6/22/20  | Concurred on 7/20/20           |
| 68                              | 12/28/18   | Concurred on 1/28/19           |
| 71                              | 12/28/18   | Concurred on 1/28/19           |
| 73                              | 10/5/20  | Concurred on 11/4/20           |
| 76                              | 12/16/20   | Concurred on 1/15/21           |
| 77                              | 12/28/18   | Concurred on 1/28/19           |
| 78                              | 3/16/21  | Concurred on 4/16/21           |
| 80                              | 9/30/22  | Concurred on 10/31/22          |
| 83                              | 9/30/22  | Concurred on 10/31/22          |
| 84                              | 9/9/19   | Concurred on 10/2/19           |

| <b>Paragraph</b> | <b>MCSO Asserted Full and Effective Compliance</b> | <b>Monitor's Determination</b> |
|------------------|--|--------------------------------|
| 85               | 10/5/20  | Concurred on 11/4/20           |
| 86               | 10/5/20  | Concurred on 11/4/20           |
| 88               | 12/28/18   | Concurred on 1/28/19           |
| 89               | 12/9/19  | Concurred on 1/6/20            |
| 93               | 3/17/20  | Concurred on 4/9/20            |
| 101              | 12/28/18   | Concurred on 1/28/19           |
| 102              | 12/16/20   | Concurred on 1/15/21           |
| 104              | 3/17/20  | Concurred on 4/9/20            |
| 105              | 10/5/20  | Concurred on 11/4/20           |
| 106              | 6/3/19   | Concurred on 6/25/19           |
| 113              | 6/17/22  | Concurred on 7/15/22           |
| 114              | 6/17/22  | Concurred on 7/15/22           |
| 167              | 12/23/21   | Concurred on 1/24/22           |
| 168              | 12/23/21   | Concurred on 1/24/22           |
| 169              | 12/23/21   | Concurred on 1/24/22           |
| 170              | 12/23/21   | Concurred on 1/24/22           |
| 171              | 12/23/21   | Concurred on 1/24/22           |
| 172              | 12/23/21   | Concurred on 1/24/22           |
| 173              | 6/17/22  | Did not concur on 7/15/22      |
| 174              | 6/17/22  | Concurred on 7/15/22           |
| 177              | 6/18/21  | Concurred on 7/19/21           |
| 178              | 6/17/22  | Concurred on 7/15/22           |
| 179              | 6/17/22  | Concurred on 7/15/22           |
| 180              | 6/17/22  | Concurred on 7/15/22           |
| 182              | 9/24/21  | Concurred on 10/25/21          |
| 184              | 6/18/21  | Concurred on 7/19/21           |
| 185              | 6/18/21  | Concurred on 7/19/21           |
| 186              | 6/18/21  | Concurred on 7/19/21           |

| <b>Paragraph</b> | <b>MCSO Asserted Full and Effective Compliance</b> | <b>Monitor's Determination</b> |
|------------------|--|--------------------------------|
| 187              | 6/18/21  | Concurred on 7/19/21           |
| 188              | 6/18/21  | Concurred on 7/19/21           |
| 189              | 12/23/21   | Concurred on 1/24/22           |
| 190              | 9/30/22  | Concurred on 10/31/22          |
| 191              | 12/23/21   | Concurred on 1/24/22           |
| 192              | 9/30/22  | Concurred on 10/31/22          |
| 193              | 12/23/21   | Concurred on 1/24/22           |
| 196              | 12/23/21   | Concurred on 1/24/22           |
| 198              | 9/30/22  | Concurred on 10/31/22          |
| 199              | 12/23/21   | Concurred on 1/24/22           |
| 200              | 9/30/22  | Concurred on 10/31/22          |
| 201              | 12/23/21   | Concurred on 1/24/22           |
| 202              | 9/30/22  | Concurred on 10/31/22          |
| 203              | 9/30/22  | Concurred on 10/31/22          |
| 206              | 9/30/22  | Concurred on 10/31/22          |
| 210              | 9/24/21  | Concurred on 10/25/21          |
| 214              | 9/24/21  | Concurred on 10/25/21          |
| 215              | 9/24/21  | Concurred on 10/25/21          |
| 217              | 9/24/21  | Concurred on 10/25/21          |
| 218              | 9/24/21  | Concurred on 10/25/21          |
| 221              | 9/24/21  | Concurred on 10/25/21          |
| 222              | 9/30/22  | Concurred on 10/31/22          |
| 223              | 9/24/21  | Concurred on 10/25/21          |
| 224              | 9/24/21  | Concurred on 10/25/21          |
| 225              | 9/24/21  | Concurred on 10/25/21          |
| 227              | 3/16/21  | Concurred on 4/16/21           |
| 228              | 3/16/21  | Concurred on 4/16/21           |
| 229              | 3/16/21  | Concurred on 4/16/21           |

| <b>Paragraph</b> | <b>MCSO Asserted Full and Effective Compliance</b> | <b>Monitor's Determination</b> |
|------------------|--|--------------------------------|
| 230              | 3/16/21  | Concurred on 4/16/21           |
| 231              | 3/16/21  | Concurred on 4/16/21           |
| 232              | 3/16/21  | Concurred on 4/16/21           |
| 233              | 3/16/21  | Concurred on 4/16/21           |
| 234              | 3/16/21  | Concurred on 4/16/21           |
| 235              | 3/16/21  | Concurred on 4/16/21           |
| 236              | 3/16/21  | Concurred on 4/16/21           |
| 238              | 3/16/21  | Concurred on 4/16/21           |
| 239              | 3/16/21  | Concurred on 4/16/21           |
| 243              | 9/30/22  | Concurred on 10/31/22          |
| 244              | 12/16/20   | Concurred on 1/15/21           |
| 245              | 12/16/20   | Concurred on 1/15/21           |
| 247              | 12/16/20   | Concurred on 1/15/21           |
| 248              | 12/16/20   | Concurred on 1/15/21           |
| 249              | 12/16/20   | Concurred on 1/15/21           |
| 250              | 4/1/22   | Concurred on 4/29/22           |
| 251              | 4/1/22   | Concurred on 4/29/22           |
| 252              | 4/1/22   | Concurred on 4/29/22           |
| 253              | 4/1/22   | Concurred on 4/29/22           |
| 254              | 4/1/22   | Concurred on 4/29/22           |
| 255              | 4/1/22   | Concurred on 4/29/22           |
| 256              | 4/1/22   | Concurred on 4/29/22           |
| 257              | 4/1/22   | Concurred on 4/29/22           |
| 258              | 4/1/22   | Concurred on 4/29/22           |
| 259              | 4/1/22   | Concurred on 4/29/22           |
| 264              | 12/16/20   | Concurred on 1/15/21           |
| 266              | 12/16/20   | Concurred on 1/15/21           |
| 272              | 9/30/22  | Concurred on 10/31/22          |

| <b>Paragraph</b> | <b>MCSO Asserted Full and Effective Compliance</b> | <b>Monitor's Determination</b> |
|------------------|--|--------------------------------|
| 273              | 12/16/20   | Concurred on 1/15/21           |
| 276              | 12/16/20   | Concurred on 1/15/21           |
| 278              | 12/16/20   | Concurred on 1/15/21           |
| 279              | 12/16/20   | Concurred on 1/15/21           |
| 287              | 12/16/20   | Concurred on 1/15/21           |
| 288              | 12/16/20   | Did not concur on 1/15/21      |
| 292              | 12/16/20   | Concurred on 1/15/21           |
| 337              | 12/16/20   | Concurred on 1/15/21           |

## **First Supplemental Permanent Injunction/Judgment Order**

### **Section 3: Implementation Unit Creation and Documentation Requests**

#### **COURT ORDER III. MCSO IMPLEMENTATION UNIT AND INTERNAL AGENCY-WIDE ASSESSMENT** *[Court Order wording in italics]*

***Paragraph 9.** Defendants shall hire and retain, or reassign current MCSO employees to form an interdisciplinary unit with the skills and abilities necessary to facilitate implementation of this Order. This unit shall be called the MCSO Implementation Unit and serve as a liaison between the Parties and the Monitor and shall assist with the Defendants' implementation of and compliance with this Order. At a minimum, this unit shall: coordinate the Defendants' compliance and implementation activities; facilitate the provision of data, documents, materials, and access to the Defendants' personnel to the Monitor and Plaintiffs representatives; ensure that all data, documents and records are maintained as provided in this Order; and assist in assigning implementation and compliance-related tasks to MCSO Personnel, as directed by the Sheriff or his designee. The unit will include a single person to serve as a point of contact in communications with Plaintiffs, the Monitor and the Court.*

#### **In Full and Effective Compliance**

To verify Phase 2 compliance with this Paragraph, we reviewed the monthly personnel rosters for the Court Implementation Division (CID). CID is currently staffed with one captain, one lieutenant, three sergeants, two deputies, one management assistant, two administrative assistants, and one management analyst. CID continues to be supported by Maricopa County Attorney's Office (MCAO) attorneys, who frequently participate in our meetings and telephone calls with Division personnel.

During this reporting period, CID continued to provide documents through MCSO's counsel via an Internet-based application. We, the Plaintiffs, and the Plaintiff-Intervenor receive all files and documents simultaneously, with only a few exceptions centering on open internal investigations. CID effectively facilitates our and Parties' access to MCSO's personnel.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 10.** *MCSO shall collect and maintain all data and records necessary to: (1) implement this order, and document implementation of and compliance with this Order, including data and records necessary for the Monitor to conduct reliable outcome assessments, compliance reviews, and audits; and (2) perform ongoing quality assurance in each of the areas addressed by this Order. At a minimum, the foregoing data collection practices shall comport with current professional standards, with input on those standards from the Monitor.*

**In Full and Effective Compliance**

CID continues to be responsive to our requests. CID also addresses with immediacy any issues we encounter in the samples we request – be they technical issues, missing documents, or other problems. MCSO’s Bureau of Internal Oversight (BIO) routinely audits the work products of the Office, particularly in the areas that directly affect compliance with the requirements of the Orders. In many instances, BIO will review the same material we request in our samples, and BIO frequently notes – and addresses – the same deficiencies we identify in our reviews.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 11.** *Beginning with the Monitor’s first quarterly report, the Defendants, working with the unit assigned for implementation of the Order, shall file with the Court, with a copy to the Monitor and Plaintiffs, a status report no later than 30 days before the Monitor’s quarterly report is due. The Defendants’ report shall (i) delineate the steps taken by the Defendants during the reporting period to implement this Order; (ii) delineate the Defendants’ plans to correct any problems; and (iii) include responses to any concerns raised in the Monitor’s previous quarterly report.*

**In Full and Effective Compliance**

MCSO submitted its 34<sup>th</sup> quarterly compliance report on January 6, 2023. See Paragraph 13.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 12.** *The Defendants, working with the unit assigned for implementation of the Order, shall conduct a comprehensive internal assessment of their Policies and Procedures affecting Patrol Operations regarding Discriminatory Policing and unlawful detentions in the field as well as overall compliance with the Court's orders and this Order on an annual basis. The comprehensive Patrol Operations assessment shall include, but not be limited to, an analysis of collected traffic-stop and high-profile or immigration-related operations data; written Policies and Procedures; Training, as set forth in the Order; compliance with Policies and Procedures; Supervisor review; intake and investigation of civilian Complaints; conduct of internal investigations; Discipline of officers; and community relations. The first assessment shall be conducted within 180 days of the Effective Date. Results of each assessment shall be provided to the Court, the Monitor, and Plaintiffs' representatives.*

### **In Full and Effective Compliance**

We and CID established that the schedule for the submission of comprehensive annual assessments as required by these Paragraphs will run according to MCSO's fiscal year cycle, July 1-June 30. MCSO submits reports on or before September 15 of each year.

Consistent with this agreement, on September 15, 2022, MCSO filed with the Court its 2021 Annual Compliance Report covering the period of July 1, 2021 through June 30, 2022.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 13.** *The internal assessments prepared by the Defendants will state for the Monitor and Plaintiffs' representatives the date upon which the Defendants believe they are first in compliance with any subpart of this Order and the date on which the Defendants first assert they are in Full and Effective Compliance with the Order and the reasons for that assertion. When the Defendants first assert compliance with any subpart or Full and Effective Compliance with the Order, the Monitor shall within 30 days determine whether the Defendants are in compliance with the designated subpart(s) or in Full and Effective Compliance with the Order. If either party contests the Monitor's determination it may file an objection with the Court, from which the Court will make the determination. Thereafter, in each assessment, the Defendants will indicate with which subpart(s) of this Order it remains or has come into full compliance and the reasons therefore. The Monitor shall within 30 days thereafter make a determination as to whether the Defendants remain in Full and Effective Compliance with the Order and the reasons therefore. The Court may, at its option, order hearings on any such assessments to establish whether the Defendants are in Full and Effective Compliance with the Order or in compliance with any subpart(s).*

### **In Full and Effective Compliance**

MCSO submitted its 34<sup>th</sup> quarterly compliance report on January 6, 2023. The report covers the steps MCSO has taken to implement the Court's Orders during the third quarter of 2022. The report also includes any plans to correct difficulties encountered during the quarter and responses to concerns raised in our 33<sup>rd</sup> quarterly status report.

In its report, MCSO asserted Full and Effective Compliance (FEC) with 13 additional Paragraphs: 62, 181, 197, 208, 216, 226, 241, 246, 268, 271, 282, 284, and 286. The majority of Paragraphs pertain to misconduct investigations. Paragraph 181 requires MCSO to provide training on civilian complaint intake, including on how to provide complaint materials and the consequences for failing to take complaints. Paragraph 197 requires that PSB be headed by a qualified Commander who has the authority to reach findings in investigations and preliminarily determine discipline. Paragraph 208 states that all allegations of misconduct shall identify and recommend one of the following dispositions: unfounded, sustained, not sustained, or exonerated. Paragraph 216 requires that, after an investigation is conducted by PSB, if an employee's actions are found to violate policy, the PSB Commander shall direct the appropriate discipline or corrective action; and if a policy, training, tactical, or equipment issue is raised, then PSB must ensure that necessary training be delivered and concerns be resolved. Paragraph 226 requires that if a designated member of MCSO's command staff conducting a Pre-Determination Hearing (PDH) does not uphold the charges recommended by PSB, the Sheriff shall require Command staff to set forth in writing the justification for not doing so to append to the investigation file. During the course of an investigation, PSB must send updates to the complainant pursuant to Paragraph 246. MCSO also asserts compliance with other matters including that the PSB facility is easily accessible to members of the public (Paragraph 241).

Other Paragraphs pertain to Class Remedial Matters which the Monitor may override (Paragraphs 282, 284, and 286); the transfers of personnel that must be approved by the Monitor (Paragraph 268), and the requirement that body-worn cameras be activated when a stop is initiated (Paragraph 62). MCSO also asserts FEC with Paragraph 271, which requires MCSO to promulgate protocols for the preservation and production of documents requested in litigation.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

## Section 4: Policies and Procedures

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### COURT ORDER V. POLICIES AND PROCEDURES

**Paragraph 18.** *MCSO shall deliver police services consistent with the Constitution and laws of the United States and State of Arizona, MCSO policy, and this Order, and with current professional standards. In conducting its activities, MCSO shall ensure that members of the public receive equal protection of the law, without discriminating based on actual or perceived race or ethnicity, and in a manner that promotes public confidence.*

**Paragraph 19.** *To further the goals in this Order, the MCSO shall conduct a comprehensive review of all Patrol Operations Policies and Procedures and make appropriate amendments to ensure that they reflect the Court's permanent injunction and this Order.*

**Phase 1:** In compliance

- GA-1 (Development of Written Orders), most recently amended on January 12, 2022.

**Phase 2:** In compliance

MCSO has taken steps toward a comprehensive review of its Patrol Operations Policies and Procedures in four phases. First, on December 31, 2013, prior to my appointment as Monitor, MCSO filed with the Court all of its policies and procedures, with amendments, that MCSO believed complied with the various Paragraphs of the First Order. Second, in the internal assessment referenced above, MCSO discussed its ongoing evaluation of Patrol Operations and its development of policies and procedures. Third, in response to our requests, MCSO provided all of the policies and procedures it maintains are applicable to the First Order for our review and that of the Plaintiffs. We provided our feedback, which also included the Plaintiffs' comments, on these policies on August 12, 2014. Based on that feedback, MCSO made adjustments to many of the policies, concentrating first on the policies to be disseminated in Detentions, Arrests, and the Enforcement of Immigration-Related Laws Training; and the Bias Free Policing Training (often referred to as Fourth and Fourteenth Amendment Training) that commenced in early September. We reviewed MCSO's updated policies and provided our approval for several on August 25, 2014.

Fourth, in discussions during 2016, MCSO requested more specific guidance on what we considered to be Patrol-related policies and procedures. In response, we provided MCSO with a list of the Patrol-related policies for the purposes of Paragraph 19. We included on this list policies that were not recently revised or currently under review. Several policies required changes to comport with the First Order, Second Order, or both. In 2018, MCSO published the last of the outstanding policies, achieving compliance with this Paragraph.

**Paragraph 20.** *The MCSO shall comply with and operate in accordance with the Policies and Procedures discussed in this Order and shall take all reasonable measures to ensure that all Patrol Operations personnel comply with all such Policies and Procedures.*

**a. Policies and Procedures to Ensure Bias-Free Policing**

**Paragraph 21.** *The MCSO shall promulgate a new, department-wide policy or policies clearly prohibiting Discriminatory Policing and racial profiling. The policy or policies shall, at a minimum:*

- a. define racial profiling as the reliance on race or ethnicity to any degree in making law enforcement decisions, except in connection with a reliable and specific suspect description;*
- b. prohibit the selective enforcement or non-enforcement of the law based on race or ethnicity;*
- c. prohibit the selection or rejection of particular policing tactics or strategies or locations based to any degree on race or ethnicity;*
- d. specify that the presence of reasonable suspicion or probable cause to believe an individual has violated a law does not necessarily mean that an officer's action is race-neutral; and*
- e. include a description of the agency's Training requirements on the topic of racial profiling in Paragraphs 48–51, data collection requirements (including video and audio recording of stops as set forth elsewhere in this Order) in Paragraphs 54–63 and oversight mechanisms to detect and prevent racial profiling, including disciplinary consequences for officers who engage in racial profiling.*

**In Full and Effective Compliance**

MCSO has developed and published the policies required by Paragraph 21. MCSO distributed these policies and has trained agency personnel during the required Fourth and Fourteenth Amendment training, on an annual basis, since 2014. MCSO's implementation of these policies is covered in other Paragraphs.

On June 22, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 22.** *MCSO leadership and supervising Deputies and detention officers shall unequivocally and consistently reinforce to subordinates that Discriminatory Policing is unacceptable.*

**Phase 1:** In compliance

- CP-8 (Preventing Racial and Other Bias-Based Policing), most recently amended on October 13, 2022.
- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), most recently amended on April 27, 2022.

**Phase 2:** In compliance

With input from the Parties, the reinforcement of CP-8 (Preventing Racial and Other Bias-Based Policing) was modified to a two-step process conducted annually. MCSO describes Part 1 of the process as the following: “On an annual basis, within the first six months, supervisors will have discussions, either individual or group, and view videos from the Training library with assigned employees, Reserve deputies, and Posse members. The videos will be available through the HUB and attestation of the training will be through the HUB.” Part 2 of the process as described by MCSO: “On an annual basis, within the last six months, supervisors shall ensure that all employees, reserve deputies, and Posse members complete their annual review and acknowledgment of office policy. In addition, employees will be required to view a video from the Sheriff or designee, which reinforces the policy. Acknowledgement is done through the HUB.”

As an additional measure, supervisors will have the latitude to review and discuss the policy with their employees and document their discussions in BlueTeam. MCSO will provide proof of compliance biannually, at the end of the six-month periods, when each of the elements of the process is completed. MCSO will also provide progress reports in the interim.

For the first six months of 2022, MCSO submitted training compliance reports for all classifications. As noted in our compliance status report for the second quarter, the overall compliance rate for this Paragraph, for the first half of 2022, was 99.06%. The training cycle for the second half of 2022 ends on December 31. We will assess compliance with this Paragraph, for the second half of 2022, in our next quarterly status report. MCSO remains in compliance with this Paragraph.

**Paragraph 23.** *Within 30 days of the Effective Date, MCSO shall modify its Code of Conduct to prohibit MCSO Employees from utilizing County property, such as County e-mail, in a manner that discriminates against, or denigrates, anyone on the basis of race, color, or national origin.*

### **In Full and Effective Compliance**

BIO uses a randomizing program to select samples for each inspection. BIO reviews CAD messages to verify compliance with CP-2 (Code of Conduct), CP-3 (Workplace Professionalism: Discrimination and Harassment), and GM-1 (Electronic Communications, Data and Voice Mail). In its submission, MCSO includes the specific nature of any potential concerns identified during the audits. We observed the processes BIO uses to conduct CAD and email audits, to ensure that we thoroughly understand the mechanics involved in conducting these audits. For CAD and email audits, we receive copies of the audits completed by BIO, the details of any violations found, and copies of the memoranda of concern or BIO Action Forms that are completed. Email and CAD/Alpha Paging inspections are completed on a quarterly basis. For email inspections, MCSO will inspect 50 employees per quarter, and for CAD/Alpha Paging, MCSO will inspect 15 days per quarter.

For the third quarter of 2022, we reviewed CAD and Alpha Paging Inspection Report (BI2022-0130), as proof of compliance with this Paragraph. MCSO selected a random sample of 15 days in the quarter for inspection. There was a total of 7,792 CAD and Alpha Paging entries for the selected dates. The inspection found that 100% of the inspected messages were in compliance with policies GM-1 (Electronic Communications, Data and Voice Mail), CP-2 (Code of Conduct), CP-3 (Workplace Professionalism: Discrimination and Harassment), and CP-8 (Preventing Racial and Other Biased-Based Profiling).

For the third quarter of 2022, we reviewed employees' Emails Inspection Report (BI2022-0138), as proof of compliance with this Paragraph. BIO selected a total of 50 employees for review, and inspected a total of 13,969 emails. The inspection found that 13,969, or 100% of the emails inspected were in compliance. For the third quarter of 2022, MCSO did not conduct any facility inspections.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 24.** *The MCSO shall ensure that its operations are not motivated by or initiated in response to requests for law enforcement action based on race or ethnicity. In deciding to take any law enforcement action, the MCSO shall not rely on any information received from the public, including through any hotline, by mail, email, phone or in person, unless the information contains evidence of a crime that is independently corroborated by the MCSO, such independent corroboration is documented in writing, and reliance on the information is consistent with all MCSO policies.*

### **In Full and Effective Compliance**

MCSO created the Sheriff's Intelligence Leads and Operations (SILO) Unit in the first quarter of 2016. The SILO Unit became operational on September 11, 2017. GI-7 requires that any tips received by MCSO components be forwarded to the SILO Unit for recording and processing. The SILO Unit classifies this information by the type of alleged criminal activity, or service requested, and forwards it to the appropriate Unit for action and response. In some cases, community members email or call with requests for traffic enforcement, or for MCSO to address quality-of-life issues; these are considered calls for service rather than tips on criminal activity. If the information provided pertains to criminal activity in another jurisdiction, MCSO forwards the information to the appropriate law enforcement agency and documents it in the SILO database. We review a monthly tip list report, noting the date received and a general description of each tip. We also review an audit report showing the disposition of tips received. If there is any bias noted in the information received for any tip, MCSO generally closes the tip and takes no action. We review all tips that MCSO closes due to bias.

During the third quarter of 2022, we reviewed 427 tips submitted for July, 495 tips submitted for August, and 297 tips submitted for September. We reviewed a total of 1,219 tips, which were classified and recorded according to the type of alleged violation or service requested. Information related to drugs, fugitives, and general suspicious activities were the most reported concerns. These were followed by tips related to assaults and homicides. Traffic complaints were in the range previously reported in past reviews. We reviewed one tip that was closed in July due to bias. This was information provided anonymously with regard to a robbery. The caller did not provide any relevant information. The only information provided was an opinion as to the race/ethnicity of the perpetrator. We reviewed the documentation submitted and concluded that MCSO followed appropriate protocols for closing the tip.

On June 18, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***b. Policies and Procedures to Ensure Bias-Free Traffic Enforcement***

***Paragraph 25.*** *The MCSO will revise its policy or policies relating to traffic enforcement to ensure that those policies, at a minimum:*

- a. prohibit racial profiling in the enforcement of traffic laws, including the selection of which vehicles to stop based to any degree on race or ethnicity, even where an officer has reasonable suspicion or probable cause to believe a violation is being or has been committed;*
- b. provide Deputies with guidance on effective traffic enforcement, including the prioritization of traffic enforcement resources to promote public safety;*
- c. prohibit the selection of particular communities, locations or geographic areas for targeted traffic enforcement based to any degree on the racial or ethnic composition of the community;*
- d. prohibit the selection of which motor vehicle occupants to question or investigate based to any degree on race or ethnicity;*
- e. prohibit the use of particular tactics or procedures on a traffic stop based on race or ethnicity;*
- f. require deputies at the beginning of each stop, before making contact with the vehicle, to contact dispatch and state the reason for the stop, unless Exigent Circumstances make it unsafe or impracticable for the deputy to contact dispatch;*
- g. prohibit Deputies from extending the duration of any traffic stop longer than the time that is necessary to address the original purpose for the stop and/or to resolve any apparent criminal violation for which the Deputy has or acquires reasonable suspicion or probable cause to believe has been committed or is being committed;*
- h. require the duration of each traffic stop to be recorded;*
- i. provide Deputies with a list and/or description of forms of identification deemed acceptable for drivers and passengers (in circumstances where identification is required of them) who are unable to present a driver's license or other state-issued identification; and*
- j. instruct Deputies that they are not to ask for the Social Security number or card of any motorist who has provided a valid form of identification, unless it is needed to complete a citation or report.*

**Phase 1:** In compliance

- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), most recently amended on April 27, 2022.
- EB-2 (Traffic Stop Data Collection), most recently amended on June 15, 2021.
- GI-1 (Radio and Enforcement Communications Procedures), most recently amended on December 8, 2021.

- CP-8 (Preventing Racial and Other Bias-Based Policing), most recently amended on October 13, 2022.
- EA-11 (Arrest Procedures), most recently amended on April 5, 2022.

**Phase 2: Deferred**

During the finalization of the Fourth and Fourteenth Amendment training curricula required by the Order, the Parties agreed to a list and/or description of forms of identification deemed acceptable for drivers and passengers, as required by this Paragraph. The data required for verification to ensure compliance with these policies is captured by the TraCS system. The system documents the requirements of the Order and MCSO policies. MCSO has continued to make technical changes to the TraCS system to ensure that the mandatory fields on the forms used to collect the data are completed and that deputies are capturing the required information. TraCS is a robust system that allows MCSO to make technical changes to improve how required information is captured.

To verify Phase 2 compliance with this Paragraph, we reviewed MCSO's Vehicle Stop Contact Form (VSCF), Vehicle Stop Contact Form Supplemental Sheet, Incidental Contact Receipt, Written Warning/Repair Form, Arizona Traffic Ticket and Complaint Form, Internet I/Viewer Event Form, Justice Web Interface Form, CAD printout, and any Incident Report generated by the traffic stop. MCSO created many of these forms to capture the requirements of Paragraphs 25 and 54.

Since our July 2015 site visit, there has been significant improvement in the TraCS system that has enhanced the reliability and validity of the data provided by MCSO. This improvement has been buttressed by the introduction of data quality control procedures now being implemented and memorialized in the EIU Operations Manual. (This is further discussed in Paragraph 56, below.) We also compared traffic stop data between Latino and non-Latino drivers in the samples provided to us.

Paragraph 25.a. prohibits racial profiling in the enforcement of traffic laws, including the selection of which vehicles to stop based to any degree on race or ethnicity, even where a deputy has reasonable suspicion or probable cause to believe a violation is being or has been committed. The selection of the sample size and the sampling methodology employed for drawing our sample is detailed in Section 7: Traffic Stop Documentation and Data Collection.

We review a sample of 105 traffic stops each reporting period to assess this requirement. Our review of the sample of 105 traffic stops that occurred during this reporting period in Districts 1, 2, 3, 4, and 7, and Lake Patrol indicated that MCSO was following protocol, and that the stops did not violate the Order or internal policies. The District formerly known as District 6 no longer exists, as it is now patrolled by the newly created Queen Creek Police Department, which commenced operating fully in that area on January 11, 2022. Paragraphs 66 and 67 require an annual comprehensive analysis of all traffic stop data, which will more accurately determine if MCSO is meeting the requirements of this Paragraph. MCSO remains in compliance with this Subparagraph.

Paragraph 25.b. requires MCSO to provide deputies with guidance on effective traffic enforcement, including the prioritization of traffic enforcement resources to promote public safety. EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), Sections A-E, address these concerns. The policy specifies that driving under the influence and speeding are the main causes of accidents, and should be the focus of traffic enforcement. Based on our review of the data provided for this reporting period, the most common traffic stop violations are as follows: 51 stops for speeding above the posted limit (49%); 19 stops for failure to obey official traffic control devices (18%); six stops for failure to possess valid registrations or tags (6%); 13 stops for equipment violations (12%); three stops for failing to maintain a lane of traffic (3%); and 13 stops for other moving violations (12%).

As the policy specifically identifies speeding violations as one of the contributing factors of traffic accidents, MCSO deputies have targeted this violation. In our review, we break down the specific traffic violation for each stop and use each traffic stop form completed by deputies during the stop to determine if the stop is justified and fulfills the requirements of this Paragraph. MCSO remains in compliance with this Subparagraph.

Paragraph 25.c. requires MCSO to prohibit the selection of particular communities, locations, or geographic areas for targeted traffic enforcement based to any degree on the racial or ethnic composition of the community. During our inspection, we document the location of every stop and note the GPS coordinates if available. Our review of the sample data covering all MCSO Districts during this reporting period did not indicate that MCSO was targeting any specific area or ethnicity to conduct traffic stops.

MCSO remains in compliance with this Subparagraph.

Paragraph 25.d. requires MCSO to prohibit the selection of which motor vehicle occupants to question or investigate based, to any degree, on race or ethnicity. We reviewed the demographic data of Maricopa County (according to 2018 U.S. Census data, 31.1% of the population is Latino), and found that the ratio of Latino drivers stopped during this reporting period was lower than in the past reporting period in comparison to the ethnicity of the population in the County. (See Paragraph 54.e.)

A review of complaint investigations closed during this reporting period did not reveal that any complaints were filed alleging that MCSO deputies selected motor vehicle occupants for questioning or investigation, based on the individual's race or ethnicity.

MCSO has fully implemented body-worn cameras, and we review a sample of the recordings each reporting period to verify if deputies are questioning occupants to determine if they are legally in the country. We did not identify any such events during this reporting period.

During this reporting period, we observed that 37 of the 105 stops occurred during nighttime hours. Our review of the sample data indicated that generally, traffic stops were not based on race or ethnicity and reflected the general makeup of the population of the County. In most instances, the deputies document on the VSCF that they were unable to determine the race/ethnicity and gender of the vehicle occupants prior to the stop. MCSO is in compliance with this Subparagraph.

Paragraph 25.e. requires MCSO to prohibit the use of particular tactics or procedures on a traffic stop based on race or ethnicity. We reviewed a sample of CAD audio recordings and CAD printouts where the dispatcher entered the reason for the stop when advised by the deputy in the field. We also reviewed body-worn camera recordings of deputies making traffic stops. The methodology that we employed to select our cases is described in detail in Section 7. In the cases we reviewed, the CAD audio recordings and the body-worn camera recordings revealed that deputies were not making traffic stops using tactics based on race or ethnicity. MCSO has achieved Phase 1 and Phase 2 compliance with Paragraph 66, and Phase 1 compliance with Paragraph 67; however, MCSO has not yet achieved Phase 2 compliance with Paragraph 67. Accordingly, we are deferring our compliance assessment of this Subparagraph.

Paragraph 25.f. requires deputies at the beginning of each stop, before making contact with the vehicle, to verbally contact dispatch and state the reason for the stop unless exigent circumstances make it unsafe for the deputy to contact Communications. When the deputy advises Communications of the location, tag number, and reason for the stop, this information is digitally logged on the CAD printout and it is audio recorded. (See Paragraph 54.e.) We reviewed 30 CAD audio recordings and the CAD printouts; in each, the deputy advised dispatch of the reason for the stop. Through our reviews of body-worn camera recordings and CAD printouts, we verified that the reason for the stop was voiced prior to making contact with the drivers in 30 of the 30 cases we reviewed. For the 75 other cases that were part of our sample, we reviewed the VSCFs and the CAD printouts to ensure that deputies properly advised dispatch of the reason for the stop prior to making contact with the violator. In all 75 stops, the deputy properly advised dispatch the reason for the stop. MCSO is in compliance with this Subparagraph.

Paragraph 25.g. prohibits deputies from extending the duration of any traffic stop longer than the time that is necessary to address the original purpose for the stop and/or to resolve any apparent criminal violation for which the deputy has or acquires reasonable suspicion or probable cause to believe has been committed or is being committed. MCSO employs a series of seven questions on the VSCF to document the circumstances that might require a stop to be prolonged. Deputies are to indicate whether they experienced technological difficulties; whether the stop required the towing of a vehicle; whether the stop involved training; whether the stop involved a language barrier; whether the stop involved a driving under the influence investigation; or whether the stop involved issues related to the status of the drivers' license, insurance, or registration. In each of the stops where the deputies documented these events, the duration of the stop was determined to be reasonable.

MCSO remains in compliance with this Subparagraph.

Paragraph 25.h. requires the duration of each traffic stop to be recorded. The time of the stop and its termination is now auto-populated on the VSCF by the CAD system. To ensure data entry accuracy, MCSO implemented a technical change to the TraCS system on November 29, 2016. The change automatically creates a red field in the stop contact times if the deputy manually changes these times on the VSCF. In our review, we determined that the duration was recorded accurately in all 105 traffic stops. MCSO is in compliance with this Subparagraph, with a compliance rate of 100%.

Paragraph 25.i. requires that MCSO provide deputies with a list and/or description of forms of identification deemed acceptable for drivers and passengers (in circumstances where identification is required of them) who are unable to present a driver's license or other state-issued identification. The Plaintiffs' attorneys and MCSO agreed on acceptable forms of identification, and this information has been included in the Fourth and Fourteenth Amendment training. EA-11 (Arrest Procedures) provides a list of acceptable forms of identification if a valid driver's license cannot be produced. During this reporting period's review of the sample of 105 traffic stops, we identified 13 cases where the drivers did not present a valid driver's license to the deputies. In four of the cases, the deputies were able to confirm that the drivers' licenses were, in fact, valid. In the remaining nine cases, a records check revealed that the drivers did not have valid driver's licenses.

In our review of the sample of cases to assess compliance with Paragraph 54.k., searches of persons, we identified 24 cases where the drivers did not present a valid driver's license to the deputies. In three of the cases, the deputy was able to confirm that the drivers' licenses were, in fact, valid. In the remaining 21 cases, the drivers either presented an identification card or had no identification in their possession; and a records check revealed that the drivers did not have valid driver's licenses.

In our review of the sample of cases to assess compliance with Paragraphs 25.d. and 54.g., passenger contacts, we identified 26 cases where the drivers did not present a valid driver's license to the deputies. In three of the cases, the deputies were able to confirm that the drivers' licenses were, in fact, valid. In the remaining 23 cases, the drivers either presented an identification card or they had no identification in their possession and a records check revealed that the drivers did not have valid driver's licenses.

MCSO remains in compliance with this Subparagraph.

Paragraph 25.j. requires MCSO to instruct deputies that they are not to ask for the Social Security Number or card of any motorist who has provided a valid form of identification, unless it is needed to complete a citation or report. EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance) prohibits deputies from asking for the Social Security Number of any motorist who has provided a valid form of identification. During this reporting period's review of the sample of 105 traffic stops, as well as for Paragraph 54.k. and Paragraphs 25.d. and 54.g., we identified that deputies requested a driver's Social Security Number in incidents that either involved the arrest of the driver for the purpose of completing an Incident Report, or incidents where the driver did not produce a valid form of identification, both of which are permissible under this Subparagraph. MCSO remains in compliance with this Subparagraph.

Although MCSO has achieved compliance with several components of Paragraph 25, Subparagraph 25.e. is in a deferred status. Accordingly, the compliance status for Paragraph 25 is deferred.

***c. Policies and Procedures to Ensure Bias-Free Detentions and Arrests***

***Paragraph 26.*** *The MCSO shall revise its policy or policies relating to Investigatory Detentions and arrests to ensure that those policies, at a minimum:*

- a. require that Deputies have reasonable suspicion that a person is engaged in, has committed, or is about to commit, a crime before initiating an investigatory seizure;*
- b. require that Deputies have probable cause to believe that a person is engaged in, has committed, or is about to commit, a crime before initiating an arrest;*
- c. provide Deputies with guidance on factors to be considered in deciding whether to cite and release an individual for a criminal violation or whether to make an arrest;*
- d. require Deputies to notify Supervisors before effectuating an arrest following any immigration-related investigation or for an Immigration-Related Crime, or for any crime by a vehicle passenger related to lack of an identity document;*
- e. prohibit the use of a person's race or ethnicity as a factor in establishing reasonable suspicion or probable cause to believe a person has, is, or will commit a crime, except as part of a reliable and specific suspect description; and*
- f. prohibit the use of quotas, whether formal or informal, for stops, citations, detentions, or arrests (though this requirement shall not be construed to prohibit the MCSO from reviewing Deputy activity for the purpose of assessing a Deputy's overall effectiveness or whether the Deputy may be engaging in unconstitutional policing).*

**In Full and Effective Compliance**

To assess compliance with Paragraph 26, we request documentation of arrests and investigations associated with the requirements specified in this Paragraph. In addition to the review of any reported cases, we receive booking lists and criminal citation lists for each month of the reporting period, and request a random sample of cases to review.

For the third quarter of 2022, MCSO did not submit any investigatory detentions or arrests that fell within the reporting requirements of this Paragraph. For this reporting period, we also requested and reviewed 20 bookings and 20 criminal citations for each month of the quarter. Due to a duplicate found in the selection process, 119 total arrests were inspected by MCSO. In addition, we reviewed 200 Incident Reports for the quarter. All of the documentation we reviewed during this reporting period indicates that MCSO is in compliance with this Paragraph.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***d. Policies and Procedures Governing the Enforcement of Immigration-Related Laws***

***Paragraph 27.*** *The MCSO shall remove discussion of its LEAR Policy from all agency written Policies and Procedures, except that the agency may mention the LEAR Policy in order to clarify that it is discontinued.*

**In Full and Effective Compliance**

MCSO asserts that it does not have an agency LEAR policy. We have verified, through our document reviews and site compliance visits, that MCSO does not have a LEAR policy.

On March 22, 2019, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 28.*** *The MCSO shall promulgate a new policy or policies, or will revise its existing policy or policies, relating to the enforcement of Immigration-Related Laws to ensure that they, at a minimum:*

- a. specify that unauthorized presence in the United States is not a crime and does not itself constitute reasonable suspicion or probable cause to believe that a person has committed or is committing any crime;*
- b. prohibit officers from detaining any individual based on actual or suspected “unlawful presence,” without something more; prohibit officers from initiating a pre-textual vehicle stop where an officer has reasonable suspicion or probable cause to believe a traffic or equipment violation has been or is being committed in order to determine whether the driver or passengers are unlawfully present;*
- c. prohibit the Deputies from relying on race or apparent Latino ancestry to any degree to select whom to stop or to investigate for an Immigration-Related Crime (except in connection with a specific suspect description); prohibit Deputies from relying on a suspect’s speaking Spanish, or speaking English with an accent, or appearance as a day laborer as a factor in developing reasonable suspicion or probable cause to believe a person has committed or is committing any crime, or reasonable suspicion to believe that an individual is in the country without authorization;*
- d. unless the officer has reasonable suspicion that the person is in the country unlawfully and probable cause to believe the individual has committed or is committing a crime, the MCSO shall prohibit officers from (a) questioning any individual as to his/her alienage or immigration status; (b) investigating an individual’s identity or searching the individual in order to develop evidence of unlawful status; or (c) detaining an individual while contacting ICE/CBP with an inquiry about immigration status or awaiting a response from ICE/CBP. In such cases, the officer must still comply with Paragraph 25(g) of this Order. Notwithstanding the foregoing, an officer may (a) briefly question an individual as to his/her alienage or immigration status; (b) contact ICE/CBP and await a response from federal authorities if the officer has reasonable suspicion to believe the*

*person is in the country unlawfully and reasonable suspicion to believe the person is engaged in an Immigration-Related Crime for which unlawful immigration status is an element, so long as doing so does not unreasonably extend the stop in violation of Paragraph 25(g) of this Order;*

- e. prohibit Deputies from transporting or delivering an individual to ICE/CBP custody from a traffic stop unless a request to do so has been voluntarily made by the individual;*
- f. Require that, before any questioning as to alienage or immigration status or any contact with ICE/CBP is initiated, an officer check with a Supervisor to ensure that the circumstances justify such an action under MCSO policy and receive approval to proceed. Officers must also document, in every such case, (a) the reason(s) for making the immigration-status inquiry or contacting ICE/CBP, (b) the time approval was received, (c) when ICE/CBP was contacted, (d) the time it took to receive a response from ICE/CBP, if applicable, and (e) whether the individual was then transferred to ICE/CBP custody.*

### **In Full and Effective Compliance**

For this reporting period, there were no reported instances of deputies having contact with Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) for the purpose of making an immigration status inquiry, and there were no reported arrests for any immigration-related investigations, or for any immigration-related crimes. The reviews of documentation submitted for this reporting period indicate that MCSO has complied with the reporting requirements related to Paragraph 28. In our reviews of incidents involving contact with the public, including traffic stops, arrests, and investigative stops, we monitor deputies' actions to verify compliance with this Order.

In addition to the documentation requested from MCSO, to determine compliance with this Paragraph, our reviews of documentation provided for other Paragraphs of the Order have found no evidence to indicate a violation of this Paragraph. For this reporting period, we reviewed a total of 119 Arrest Reports, 295 traffic stops, 47 NTCFs, and 200 Incident Reports. We found no issues of concern, as it relates to this Paragraph.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

### ***e. Policies and Procedures Generally***

***Paragraph 29.*** *MCSO Policies and Procedures shall define terms clearly, comply with applicable law and the requirements of this Order, and comport with current professional standards.*

### **In Full and Effective Compliance**

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

See Paragraph 30.

**Paragraph 30.** *Unless otherwise noted, the MCSO shall submit all Policies and Procedures and amendments to Policies and Procedures provided for by this Order to the Monitor for review within 90 days of the Effective Date pursuant to the process described in Section IV. These Policies and Procedures shall be approved by the Monitor or the Court prior to their implementation.*

#### **In Full and Effective Compliance**

MCSO continues to provide us, the Plaintiffs' attorneys, and the Plaintiff-Intervenor with drafts of its Order-related policies and procedures prior to publication, as required by the Order. We, the Plaintiffs' attorneys, and the Plaintiff-Intervenor review the policies to ensure that they define terms clearly, comply with applicable law and the requirements of the Order, and comport with current professional standards. Once drafts are finalized, MCSO incorporates feedback from us, Plaintiffs' attorneys, and the Plaintiff-Intervenor, and then provides them to us for final review and approval. As this process has been followed for the Order-related policies published thus far, MCSO is in compliance with this Paragraph.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 31.** *Within 60 days after such approval, MCSO shall ensure that all relevant MCSO Patrol Operation Personnel have received, read, and understand their responsibilities pursuant to the Policy or Procedure. The MCSO shall ensure that personnel continue to be regularly notified of any new Policies and Procedures or changes to Policies and Procedures. The Monitor shall assess and report to the Court and the Parties on whether he/she believes relevant personnel are provided sufficient notification of and access to, and understand each policy or procedure as necessary to fulfill their responsibilities.*

#### **In Full and Effective Compliance**

GA-1 indicates that Office personnel shall be notified of new policies and changes to existing policies via Briefing Boards and via the HUB, Maricopa County's adaptation of the online training software program, Cornerstone, that MCSO implemented in July 2017 to replace its E-Policy system. Employees are required to complete personal attestations that indicate that they have read and understand policies; the HUB routinely updates recent training and policy reviews for deputies and is visible by immediate supervisors. Per GA-1, "Prior to some policies being revised, time-sensitive changes are often announced in the Briefing Board until the entire policy can be revised and finalized." As noted previously, we recognize the authority of Briefing Boards and understand their utility in publishing critical policy changes quickly; but we have advised MCSO that we generally do not grant Phase 1 compliance for an Order requirement until the requirement is memorialized in a more formal policy.

During this reporting period, MCSO did not issue or issue revisions of any Order-related policies, although the agency did issue several Briefing Boards and Administrative Broadcasts that touched on Order-related topics and revised the language of General Orders. MCSO did not publish any operations manuals during this reporting period.

On September 9, 2019, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 32.*** *The MCSO shall require that all Patrol Operation personnel report violations of policy; that Supervisors of all ranks shall be held accountable for identifying and responding to policy or procedure violations by personnel under their command; and that personnel be held accountable for policy and procedural violations. The MCSO shall apply policies uniformly.*

**Phase 1:** In compliance

- CP-2 (Code of Conduct), most recently amended on April 27, 2022.
- CP-3 (Workplace Professionalism: Discrimination and Harassment), most recently amended on December 16, 2021.
- CP-5 (Truthfulness), most recently amended on March 3, 2022.
- CP-11 (Anti-Retaliation), most recently amended on January 6, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- GC-16 (Employee Grievance Procedures), most recently amended on December 8, 2021.
- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- Administrative Services Division Operations Manual, most recently amended on November 14, 2022.
- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2:** Not in compliance

Since we began reviewing internal investigations conducted by MCSO, we have reviewed hundreds of administrative misconduct investigations submitted to our Team for this Paragraph. During our reviews, we have continued to note that the investigations conducted by PSB have generally been well-written and arrived at the appropriate findings. Though we had previously noted some improvement in those investigations conducted at the District level, during the last reporting period, compliance dropped from 68% to 58%. During this reporting period, District personnel conducted 14 of the 16 investigations that were conducted by personnel outside of PSB. Of the 14, 11 (79%) were in compliance with investigative requirements. This is a significant increase from the 58% during the last reporting period. We are hopeful this improvement can be sustained.

MCSO has trained all investigators who conduct misconduct investigations; and during our site visits, we continue to meet with the Professional Standards Bureau (PSB) and District and Division Command personnel to provide them with information regarding the cases that we have found deficient in structure, format, investigation, or reporting requirements.

PSB personnel have remained responsive to our feedback, and the investigations they submit for compliance with this Paragraph continue to be complete and thorough. PSB's reviews of investigations conducted by District personnel continue to be thorough, and PSB has identified and addressed many concerns and deficiencies they have found.

We have continued to be concerned with District case compliance, particularly because MCSO has been conducting misconduct investigations under the Court's Second Order since 2016. In 2017, MCSO made major revisions to both GH-2 (Internal Investigations) and GC-16 (Employee Grievance Procedures). By the end of December 2017, all supervisory personnel responsible for conducting misconduct investigations had attended the 40-hour Misconduct Investigative Training. Since the initial training, supervisors have attended additional training on the proper completion of these investigations.

During this reporting period, there were 14 investigations conducted by District personnel that we reviewed. Of the 14, we or PSB identified investigative and administrative deficiencies with three (21%), not including timeliness and extension concerns. This is a decrease in deficiencies from 42% in the last reporting period. The investigative deficiencies in these three cases included unsupported findings and failure to address all potential misconduct. Unlike previous quarters, we did not identify concerns with either leading questions or failing to interview all witnesses.

Since March 2018, we have requested and reviewed a monthly report from District Command personnel that documents any actions they have taken to assist their personnel in the completion of administrative misconduct investigations and any actions they have taken to address any deficiencies they have identified. During the last reporting period, we noted three instances where District Command personnel or Deputy Chiefs identified and documented an investigative deficiency in response to the protocols put in place to comply with the requirements of Paragraph 211.

During this reporting period, we noted again noted three instances where District Command personnel or Deputy Chiefs identified and documented investigative deficiencies in response to the protocols put in place to comply with the requirements of Paragraph 211.

As we have noted previously, timely corrective actions are critical to ensuring that concerns are addressed and resolved before additional deficiencies of the same kind occur. PSB continues to maintain a tracking document to identify deficiencies and ensure that appropriate follow-up or intervention is taking place. We have continued to find deficiencies on this list that have not yet been fully addressed or documented by those Districts with the responsibility for follow-up. During our October 2022 site visit, we discussed our concerns with these deficiencies with PSB Executive Command personnel. They advised that the agency would make focused efforts to address and resolve the pending concerns. We noted during our reviews for this reporting period that many of these concerns have now been properly addressed. We encourage MCSO to continue their efforts and resolve any remaining pending concerns. We will continue to monitor both interventions and deficiency memos moving forward.

During the last reporting period, we reviewed 38 administrative misconduct investigations to determine compliance with this Paragraph and made our compliance findings based on the investigative and administrative requirements for the completion of these investigations. Nineteen investigations were conducted by District personnel and 19 were conducted by PSB. Based on the identified deficiencies in District investigations and our assessment of the reasonability of the requested extensions, only one (5%) of the 19 investigations conducted by District personnel was found in compliance. Four (21%) of the 19 investigations conducted by PSB were in compliance with all requirements for the completion of misconduct investigations. Overall compliance for the 32 investigations we reviewed for this Paragraph was 13%.

During this reporting period, we reviewed 26 administrative misconduct investigations to determine compliance with this Paragraph. PSB conducted 12 of these investigations, and District personnel conducted the remaining 14. Sworn supervisors with the rank of sergeant or higher completed all the investigations conducted at the District level. Eighteen of the investigations resulted from external complaints. Eight were internally generated. All 26 of the investigations were initiated after May 17, 2017, when MCSO revised its internal investigation policies; and all were initiated after the completion of the 40-hour Misconduct Investigative Training that concluded in late 2017.

During this and the last eight reporting periods, we have met with the Deputy Chiefs responsible for oversight of Districts and Divisions outside of PSB during our remote site visits to discuss our concerns with the quality of investigations being conducted by their personnel. These meetings have resulted in useful discussion about needed improvement in the quality of District investigations. After these meetings began, District and Division command personnel began providing more oversight on the completion of these cases. For multiple reporting periods, we noted improvement in the quality of the cases submitted; and compliance had increased to 68%. During the last reporting period, however, compliance dropped to 58%. This was particularly concerning, as each of these investigations was reviewed and approved by one or more District or Division Command personnel prior to submitting the case to PSB. In most of the cases, we believed that the deficiencies could and should have been identified during the review process.

District personnel outside PSB conducted 14 of the investigations that we reviewed for compliance with this Paragraph during this reporting period. Three (21%) of the investigations were noncompliant due to concerns other than timely completion, a significant decrease from 42% during the last reporting period. We did not identify any instances where a District investigator failed to appropriately address a training or policy concern during this reporting period. All of the cases investigated by District personnel that we reviewed for this reporting period were initiated after several years of working under the requirements of the Court Orders, after training in how to conduct misconduct investigations (the 40-hour Misconduct Investigative Training completed in late 2017), and after numerous site visit meetings where our Team has provided input on identified deficiencies.

The overall investigative quality for cases investigated by PSB and reviewed by our Team for compliance with this Paragraph has remained high. For this reporting period, PSB conducted 12 of the investigations we reviewed for compliance with this Paragraph. With the exception of timely extensions, all of the 12 (100%) were found compliant with those requirements over which the PSB Commander has authority. Six cases (50%) were in full compliance including required timelines. This is a notable increase from the 21% compliance during the last reporting period.

Of the 26 administrative investigations we reviewed for this Paragraph, 17 resulted in sustained findings against known MCSO employees. We concur with the sustained findings in all 17. In five of the cases, the employees resigned prior to the completion of the investigation or imposition of discipline. The remaining 12 sustained cases resulted in one dismissal, two suspensions, six written reprimands, and three coachings. In all of these cases, the PSB Commander identified the category and offense number, as well as the presumptive discipline or range of discipline for the sustained allegations.

Of the 26 total investigations we reviewed to determine compliance with this Paragraph, eight (31%) were either submitted within the required 60- or 85-day timeframe, or included an acceptable justification for an extension, an increase from 18% during the last quarter. Of the 26 investigations we reviewed for compliance with this Paragraph, seven (27%) were finalized and closed with 180 days or included an acceptable extension approval. This is an increase from the 16% compliance we found during the last reporting period. As we have previously noted in our reports, general workload issues are insufficient justification for the failure to complete investigations in a reasonably timely manner. To be considered compliant with the requirements for the completion of administrative misconduct investigations, extension requests and justifications must be submitted in a timely manner and be reasonably related to the specific investigation.

Based on the identified deficiencies in District investigations and our assessment of the reasonability of the requested extensions, none of the 14 investigations were in full compliance with all requirements for the completion of misconduct investigations. Three of the investigations were noncompliant based on deficiencies other than timeliness. As has been the case for multiple reporting periods, we again noted a significant number of cases where multiple extensions were requested at the District level prior to forwarding the cases to PSB, and some were still in the District review process at the end of the 180-day timeframe.

Six (50%) of the 12 investigations conducted by PSB were in compliance with all requirements for the completion of misconduct investigations. This is an increase from the 21% compliance during the last reporting period. The other six of the 12 investigations were found noncompliant due only to extension requirements. Overall compliance for the 26 investigations we reviewed for this Paragraph was 23%, an increase from 13% during the last quarter.

As is our practice, we will discuss those cases that we found noncompliant with MCSO personnel during our next site visit.

***Paragraph 33.*** *MCSO Personnel who engage in Discriminatory Policing in any context will be subjected to administrative Discipline and, where appropriate, referred for criminal prosecution. MCSO shall provide clear guidelines, in writing, regarding the disciplinary consequences for personnel who engage in Discriminatory Policing.*

**Phase 1:** In compliance

- CP-8 (Preventing Racial and Other Bias-Based Policing), most recently amended on October 13, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.

**Phase 2:** Not in compliance

The investigations that we review for compliance with this Paragraph do not include biased policing complaints involving the Plaintiffs' class. Those investigations have additional compliance requirements; we discuss them in Paragraphs 275-283.

During the last reporting period, there were three investigations that were reviewed by our Team that contained allegations of discriminatory policing. Two of the three were in compliance with investigative requirements. Only one of the cases was in compliance with timeline requirements.

During this reporting period, there were three investigations reviewed where alleged bias did not involve members of the Plaintiffs' class. Two involved allegations of biased comments being made by employees in a jail facility. One involved an allegation of bias by an unknown MCSO employee. All three cases were properly investigated, and we agree with the findings of not sustained in all three. Only one of the three cases was in compliance with the requirements for timely completion of administrative investigations.

While discriminatory policing allegations that involve members of the Plaintiffs' class are not reported in this Paragraph, we note that MCSO did complete four investigations for this reporting period that were determined to be Class Remedial Matters. (We address this case in Paragraphs 275-288.)

**Paragraph 34.** *MCSO shall review each policy and procedure on an annual basis to ensure that the policy or procedure provides effective direction to MCSO Personnel and remains consistent with this Order, current law and professional standards. The MCSO shall document such annual review in writing. MCSO also shall review Policies and Procedures as necessary upon notice of a policy deficiency during audits or reviews. MCSO shall revise any deficient policy as soon as practicable.*

**In Full and Effective Compliance**

MCSO continues to review on an annual basis all critical policies and all policies relevant to the Court Orders for consistency with Constitutional policing, current law, and professional standards.

During this reporting period, MCSO continued its annual review, submitting 19 (39%) of the 48 required policies to our Team. MCSO submitted CP-3 (Workplace Professionalism); CP-8 (Preventing Racial and Other Bias-Based Profiling); CP-11 (Anti-Retaliation); EA-2 (Patrol Vehicles); EA-11 (Arrest Procedures); ED-3 (Review of Cases Declined for Prosecution); GA-1 (Development of Written Orders); GC-16 (Employee Grievance Procedures); GD-9 (Litigation Initiation, Document Preservation, and Document Production Notices); GF-1 (Restricted Criminal Justice Data Systems); GF-3 (Criminal History Record Information and Public Records); GH-2 (Internal Investigations); GH-4 (Bureau of Internal Oversight); GI-1 (Radio and Enforcement Communications Procedures); GI-5 (Voiance Language Services); GI-7 (Processing of Bias-Free Tips); GJ-2 (Critical Incident Response); GJ-33 (Significant Operations); and GM-1 (Electronic Communications, Data and Voice Mail).

On June 3, 2019, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

## Section 5: Pre-Planned Operations

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***Paragraph 35.** The Monitor shall regularly review the mission statement, policies and operations documents of any Specialized Unit within the MCSO that enforces Immigration-Related Laws to ensure that such unit(s) is/are operating in accordance with the Constitution, the laws of the United States and State of Arizona, and this Order.*

### **In Full and Effective Compliance**

To verify Phase 2 compliance with this Paragraph, we previously verified that the Criminal Employment Unit (CEU) was disbanded and removed from the Special Investigations Division organizational chart. The Human Smuggling Unit (HSU) was also disbanded, and personnel were reassigned to the Anti-Trafficking Unit (ATU).

During our review of the arrests made by the Special Investigations Division ATU between March 2015-March 2017, we did not note any arrests for immigration or human smuggling violations. The cases submitted by MCSO and reviewed for the ATU were primarily related to narcotics trafficking offenses.

MCSO reported in April 2017 that it had disbanded the Anti-Trafficking Unit and formed a new unit, Fugitive Apprehension and Tactical Enforcement (FATE). The primary mission of FATE is to locate and apprehend violent fugitives. We reviewed FATE's mission statement and objectives, as well as the organizational chart for the Special Investigations Division. MCSO had removed the ATU from the organizational chart, and the mission of FATE did not include any reference to the enforcement of Immigration-Related Laws.

The revised organizational chart for SID and documentation MCSO provided regarding the implementation of FATE supported that the ATU no longer existed, and that there were no specialized Units in MCSO that enforced Immigration-Related Laws.

We previously received and reviewed the Special Investigations Division Operations Manual and organizational chart. Both confirmed that MCSO has no specialized Units that enforce Immigration-Related Laws, that the Human Smuggling Unit (HSU) was disbanded, and the Anti-Trafficking Unit (ATU) no longer exists.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 36.** *The MCSO shall ensure that any Significant Operations or Patrols are initiated and carried out in a race-neutral fashion. For any Significant Operation or Patrol involving 10 or more MCSO personnel, excluding posse members, the MCSO shall develop a written protocol including a statement of the operational motivations and objectives, parameters for supporting documentation that shall be collected, operations plans, and provide instructions to supervisors, deputies and posse members. That written protocol shall be provided to the Monitor in advance of any Significant Operation or Patrol.*

### **In Full and Effective Compliance**

Since the requirements for conducting Significant Operations were implemented, MCSO has reported conducting only one Significant Operation that invoked the requirements of this Paragraph. MCSO conducted “Operation Borderline” from October 20-27, 2014, to interdict the flow of illegal narcotics into Maricopa County. MCSO met all the requirements of this Paragraph during the operation.

In February 2016, we became aware of “Operation No Drug Bust Too Small” when it was reported in the media, and requested details on this operation from MCSO. After reviewing the documentation MCSO provided, we were satisfied that it did not meet the reporting requirements of this Paragraph.

In October 2016, we became aware of “Operation Gila Monster” when it was reported in the media. According to media reports, this was a two-week operation conducted by a special operations Unit in MCSO and was intended to interdict the flow of illegal drugs into Maricopa County. We requested all documentation regarding this operation for review. The documentation indicated that MCSO conducted this operation from October 17-23, 2016. The documentation MCSO provided was sufficient for us to determine that this operation did not meet the reporting criteria for this, or other Paragraphs, related to Significant Operations. The Plaintiffs also reviewed the documentation submitted by MCSO on this operation and agreed that the operation did not invoke the requirements of this Paragraph. We and the Plaintiffs noted that “Operation Gila Monster” involved traffic stops of Latinos, and that those arrested were undocumented Latinos.

Since October 2014, MCSO has continued to report that it has not conducted any Significant Operations. In addition, we have not learned of any potential Significant Operation through media releases or other sources during this reporting period. We will continue to monitor and review any operations we become aware of to ensure continued compliance with this and other Paragraphs related to Significant Operations.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

*Paragraph 37. The MCSO shall submit a standard template for operations plans and standard instructions for supervisors, deputies and posse members applicable to all Significant Operations or Patrols to the Monitor for review pursuant to the process described in Section IV within 90 days of the Effective Date. In Exigent Circumstances, the MCSO may conduct Significant Operations or Patrols during the interim period but such patrols shall be conducted in a manner that is in compliance with the requirement of this Order. Any Significant Operations or Patrols thereafter must be in accordance with the approved template and instructions.*

### **In Full and Effective Compliance**

In late 2014, we reviewed all the documentation submitted by MCSO regarding the Significant Operation conducted from October 24-27, 2014. This operation was intended to interdict the flow of illegal narcotics into Maricopa County and fully complied with the requirements of this Paragraph.

MCSO continues to report that it has not conducted any operations that invoke the requirements of this Paragraph since October 2014.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

During this reporting period, we did not become aware of any Significant Operations conducted by MCSO.

**(Note: Unchanged language is presented in *italicized font*. Additions are indicated by underlined font. Deletions are indicated by ~~crossed-out font~~.)**

*Paragraph 38. If the MCSO conducts any Significant Operations or Patrols involving 10 or more MCSO Personnel excluding posse members, it shall create the following documentation and provide it to the Monitor and Plaintiffs within 30 days after the operation:*

- a. documentation of the specific justification/reason for the operation, certified as drafted prior to the operation (this documentation must include analysis of relevant, reliable, and comparative crime data);*
- b. information that triggered the operation and/or selection of the particular site for the operation;*
- c. documentation of the steps taken to corroborate any information or intelligence received from non-law enforcement personnel;*
- d. documentation of command staff review and approval of the operation and operations plans;*
- e. a listing of specific operational objectives for the patrol;*
- f. documentation of specific operational objectives and instructions as communicated to participating MCSO Personnel;*

- g. *any operations plans, other instructions, guidance or post-operation feedback or debriefing provided to participating MCSO Personnel;*
- h. *a post-operation analysis of the patrol, including a detailed report of any significant events that occurred during the patrol;*
- i. *arrest lists, officer participation logs and records for the patrol; and*
- j. *data about each contact made during the operation, including whether it resulted in a citation or arrest.*

**In Full and Effective Compliance**

Since the initial publication of GJ-33, MCSO has reported that it has conducted only one Significant Operation, “Operation Borderline,” in October 2014. At the time of this operation, we reviewed MCSO’s compliance with policy; attended the operational briefing; and verified the inclusion of all the required protocols, planning checklists, supervisor daily checklists, and post-operation reports. MCSO was in full compliance with this Paragraph for this operation. Since October 2014, MCSO has not reported that it conducted any Significant Operations invoking the requirements of this Paragraph.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

*Paragraph 39. The MCSO shall hold a community outreach meeting no more than 40 days after any Significant Operations or Patrols in the affected District(s). MCSO shall work with the Community Advisory Board to ensure that the community outreach meeting adequately communicates information regarding the objectives and results of the operation or patrol. The community outreach meeting shall be advertised and conducted in English and Spanish.*

**In Full and Effective Compliance**

The Amendments to the Supplemental Permanent Injunction/Judgment Order (Document 2100) issued on August 3, 2017 returned the responsibility for compliance with this Paragraph to MCSO.

During this reporting period, MCSO did not report conducting any Significant Operations that would invoke the requirements of this Paragraph.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 40.** *The MCSO shall notify the Monitor and Plaintiffs within 24 hours of any immigration related traffic enforcement activity or Significant Operation involving the arrest of 5 or more people unless such disclosure would interfere with an on-going criminal investigation in which case the notification shall be provided under seal to the Court, which may determine that disclosure to the Monitor and Plaintiffs would not interfere with an on-going criminal investigation. In any event, as soon as disclosure would no longer interfere with an on-going criminal investigation, MCSO shall provide the notification to the Monitor and Plaintiffs. To the extent that it is not already covered above by Paragraph 38, the Monitor and Plaintiffs may request any documentation related to such activity as they deem reasonably necessary to ensure compliance with the Court's orders.*

### **In Full and Effective Compliance**

Since MCSO first developed GJ-33 (Significant Operations) in 2014, MCSO has reported conducting only one operation, "Operation Borderline," that required compliance with this Paragraph. We verified that MCSO employed the appropriate protocols and made all required notifications. MCSO was in full compliance with this Paragraph during this operation.

Based on a concern raised by the Plaintiffs, and to provide clarification regarding the portion of this Paragraph that addresses the requirement for MCSO to notify the Monitor and Plaintiffs within 24 hours of any immigration-related traffic enforcement activity or Significant Operations involving "the arrest of 5 or more persons," we requested during our October 2015 site visit that MCSO provide a statement regarding this requirement each month. MCSO began including this information in November 2015.

MCSO has not reported conducting any operations that meet the reporting requirements for this Paragraph since October 2014. During this reporting period, we did not learn of any traffic-related enforcement or Significant Operations conducted by MCSO that would invoke the requirements of this Paragraph.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

## Section 6: Training

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### COURT ORDER VII. TRAINING

#### *a. General Provisions*

**Paragraph 41.** *To ensure that the Policies and Procedures provided for by this Order are effectuated, the MCSO shall implement the following requirements regarding Training.*

**Paragraph 42.** *The persons presenting this Training in each area shall be competent instructors with significant experience and expertise in the area. Those presenting Training on legal matters shall also hold a law degree from an accredited law school and be admitted to a Bar of any state and/or the District of Columbia.*

#### **Phase 1:** In compliance

- GG-1 (Peace Officer Training Administration), most recently amended on November 17, 2022.
- GG-2 (Detention/Civilian Training Administration), most recently amended on November 17, 2022.
- Training Division Operations Manual, most recently amended on April 4, 2022.

#### **Phase 2:** Not in compliance

MCSO uses three types of instructors to deliver Order-related training: They are either assigned to the Training Division as full-time staff; assigned to field assignments outside of the Training Division; or are paid vendors. We approve instructors presenting training on legal matters for their compliance with the requirements of this Paragraph. The Training Division manually keeps individual instructor folders for Training Division staff, field instructors, Field Training Officers (FTOs), and vendors. MCSO policy requires that instructor folders include annually updated CVs, General Instructor (GI) certificates, and either an annual or 30-day Misconduct and Disciplinary Review, as applicable. Additionally, instructors who have received prior sustained discipline or who are currently involved with an ongoing Professional Standards Bureau (PSB) investigation may request a Waiver of Presumptive Ineligibility for approval to teach from the Training Division Commander. A waiver request should provide the Training Division Commander with ample justification to overcome presumptive ineligibility. Waiver requests require the Training Division Commander to produce written justifications for the approval or denial of each request. We verify compliance with this Paragraph by reviewing all instructor folders, waiver requests, and justifications.

During this reporting period, MCSO submitted the names of 12 personnel for General Instructor (GI) consideration. All personnel except one met the criteria of GG-1 and were selected to attend GI School. The Training Division Captain rejected one of the individuals.

No new Field Training Officers (FTO) were added during this reporting period. MCSO provided GG-1 and GG-2 with proposed revisions to address identified problems with misconduct reviews of FTOs. Beginning with our 29<sup>th</sup> quarterly status report, and thereafter, we have reported on MCSO's failure to follow its existing policy when selecting and assigning FTOs. The earlier policy, published March 31, 2021, required that a Misconduct and Disciplinary Review be conducted on an FTO 30 days prior to any OIT being assigned. Additionally, Office policy violations of Category 1-3 offenses required a three-year lookback; Categories 4-7, a five-year lookback; and include an overall 10-year lookback for patterns of behavior and misconduct for individuals who have histories of three or more sustained allegations of misconduct. Pending administrative investigations of a serious offense made the employee presumptively ineligible to be utilized as an FTO until that investigation had concluded. Our 32<sup>nd</sup> quarterly status report chronicled a failure by MCSO to supply requested information from our January remote site visit, and a subsequent follow-up conference call with the Captain and lieutenant from the Training Division. We revisited this request during our April remote site visit due to a lack of response by MCSO to both requests. As a result, we deferred compliance for this Paragraph pending the receipt of documentation demonstrating a clear relationship between the date of a PSB Misconduct and Disciplinary Review and the date of assignments of OITs to their respective FTOs that conforms to GG-1. Once again for our 33<sup>rd</sup> quarterly status report, MCSO supplied monthly and follow-up documentation for FTOs that did not indicate conformance to the requirements of GG-1. As a result, we found MCSO not in compliance with its policies as it pertains to FTO and General Instructor (GI) qualifications.

The Training Division concurred that PSB Misconduct and Disciplinary Reviews posed difficulties with compliance. As a result, they proposed modifications to their policy to better inform their assignment decisions. Proposed changes included: new quarterly Misconduct and Disciplinary Reviews; District notification to the Training Division when new allegations of misconduct are made against FTOs; and reassignment of an Officer in Training (OIT) when allegations of misconduct are made against their FTO. We reviewed and approved the proposed changes for the policy, which was published November 17, 2022.

During this reporting period, the Training Division conducted three instructor observations. Two observations were conducted on instructors for the previously approved Employee Performance Appraisal (EPA) class delivered by MCSO personnel; and one observation was for the PSB8 Internal, instructed by an outside vendor. The PSB8 Internal instructor was rated above average in 15 of 17 reviewed criteria, and average in two of 17 reviewed criteria. We note that MCSO policy does not direct the frequency of these observations – only that observations are included in the Training Division database. During this reporting period, MCSO has increased the frequency and use of these observations to ensure that selected instructors demonstrate competency, experience, and expertise.

MCSO is not in compliance with this Paragraph.

**Paragraph 43.** *The Training shall include at least 60% live training (i.e., with a live instructor), which includes an interactive component, and no more than 40% on-line training. The Training shall also include testing and/or writings that indicate that MCSO Personnel taking the Training comprehend the material taught whether via live training or via on-line training.*

### **In Full and Effective Compliance**

We verify compliance with this Paragraph by reviewing all individual test failures; individual retests; failure remediation efforts, and test analyses by training class; for both live and HUB-delivered Order-related training.

During this reporting period, MCSO delivered the following programs: 2022 Annual Combined Training (ACT); 2021 Blue Team (BT Sworn); 2021 Body-Worn Camera (BWC); 2017 Employee Performance Appraisal (EPA); 2021 Effective Employee Performance Management (EPPM); 2021 Early Identification System (EIS); 2021 Supervisory Responsibilities and Effective Law Enforcement (SRELE); the 2021 Traffic and Criminal Software (TraCS); and 2021 Traffic and Criminal Software for Supervisors (TraCS for Supervisors).

MCSO delivered the 2022 ACT 26 times during this reporting period to 602 personnel (543/599 sworn, 40/41 reserve, 146/162 Posse, 9/12 Deputy Service Aides [DSAs]) requiring this training. Nine personnel needed test remediation.

MCSO delivered the 2021 BT Sworn classroom training three times during this reporting period to 10 personnel (seven sworn, one Detention, two DSA). No personnel needed test remediation.

MCSO delivered the 2021 BWC classroom training once during this reporting period to seven personnel (five sworn, two DSA). No personnel needed test remediation.

MCSO delivered the 2017 EPA classroom training twice during this reporting period to 46 personnel (23 sworn, 23 Detention). Two personnel needed test remediation.

MCSO delivered the 2021 EPPM classroom training once during this reporting period to 23 sworn personnel. No personnel needed test remediation.

MCSO delivered the 2021 EIS classroom training twice during this reporting period to 46 personnel (23 sworn, 23 Detention). Three personnel needed test remediation.

MCSO delivered the 2021 SRELE classroom training once during this reporting period to 23 sworn personnel. No personnel need test remediation.

MCSO delivered the 2021 TraCS classroom training twice during this reporting period to eight personnel (six sworn, 2 DSA). No personnel needed test remediation.

MCSO delivered the 2021 TraCS for Supervisors classroom training once during this reporting period to 23 sworn personnel. No personnel needed test remediation.

MCSO delivered nine of 14 Order-related training programs during this reporting period. Each of these were delivered in the classroom for 100% of classroom training.

MCSO incorporates tests with all Order-related training to demonstrate that personnel who have completed the training comprehend the material.

On June 17, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 44.** *Within 90 days of the Effective Date, MCSO shall set out a schedule for delivering all Training required by this Order. Plaintiffs' Representative and the Monitor shall be provided with the schedule of all Trainings and will be permitted to observe all live trainings and all on-line training. Attendees shall sign in at each live session. MCSO shall keep an up-to-date list of the live and on-line Training sessions and hours attended or viewed by each officer and Supervisor and make that available to the Monitor and Plaintiffs.*

#### **In Full and Effective Compliance**

The Training Division keeps a three-month Training Calendar. MCSO posts the Master Training Calendar to the MCSO website to inform the public of tentative training dates, classes, and locations. The calendar displays 90-day increments and includes a legend specifically identifying Order-related training.

Master Personnel Rosters document the number of personnel requiring Order-related training. MCSO reported that 599 sworn members, 12 reserve members, 29 retired reserve members, 162 Posse members, 12 DSAs, 1,581 Detention members, and 778 civilian employees should receive Order-related instruction by the end of this reporting period. These categories vary by reporting period, due to attrition in the organization. MCSO employee classes are still within in-compliance assessment levels for all Order-related training.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 45.** *The Training may incorporate adult-learning methods that incorporate roleplaying scenarios, interactive exercises, as well as traditional lecture formats.*

#### **In Full and Effective Compliance**

MCSO continues to look for and incorporate adult-learning methods in its curricula – including an increased use of videos, both externally and internally created. We have also noted new learning activities designed to change with each iteration of the curriculum and address issues specific to the Plaintiffs' class and others. These learning activities are designed to change from year to year.

On December 9, 2019, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 46.** *The curriculum and any materials and information on the proposed instructors for the Training provided for by this Order shall be provided to the Monitor within 90 days of the Effective Date for review pursuant to the process described in Section IV. The Monitor and Plaintiffs may provide resources that the MCSO can consult to develop the content of the Training, including names of suggested instructors.*

### **In Full and Effective Compliance**

During our October remote site visit, we discussed the status of all Order-required training curricula. The following curriculums were approved for 2022 delivery.

- The 2022 Fourth and Fourteenth Amendment classroom training.
- The 2022 ACT classroom training.
- The 2021 Blue Team (BT) Civilian classroom training.
- The 2021 BT Deputy, Lateral classroom training.
- The 2019 Body-Worn Camera (BWC) classroom training.
- The 2021 Early Identification System (EIS) classroom training.
- The 2021 Employee Performance Appraisals (EPA) classroom training.
- The 2021 EEPM classroom training.
- The 2021 Complaint Intake and Reception HUB training needs 2022 annual review.
- The 2022 SRELE classroom training.
- The 2022 Administrative Misconduct Investigation Refresher (PSB8) External remains under development.
- The 2021 Traffic and Criminal Software (TraCS) classroom training.
- The 2021 TraCS for Supervisors classroom training.

During this reporting period, MCSO continued development of the CPP Enhanced Implicit Bias and Cultural Competency training, highlighting the community of Gila Bend. This training was reviewed and approved for delivery.

MCSO continued to expand their video library during this reporting period. The video library is designed to supply consistent and recurring HUB briefings to MCSO personnel. Three content areas of Cultural Competency, Fair and Impartial Decision Making, and Implicit Bias were expanded with the inclusion of 12 new videos and supervisory discussion points. These videos were reviewed and approved for delivery.

On December 9, 2019, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 47.** *MCSO shall regularly update the Training to keep up with developments in the law and to take into account feedback from the Monitor, the Court, Plaintiffs and MCSO Personnel.*

**In Full and Effective Compliance**

MCSO conducts annual curriculum revisions and updates to keep current with developments in the law and to address feedback from us, the Plaintiffs, the Plaintiff-Intervenor, and MCSO personnel.

The Training Division routinely supplies all new and revised lesson plans for our and the Parties' review. These reviews address the requirements of this Paragraph.

During this reporting period, the CPP Enhanced Training on Gila Bend was approved.

We will continue to advise MCSO upon first review of a training offering if we do not consider it to be enhanced. When onsite compliance visits resume, MCSO should expect that we and the Parties will continue to observe training sessions and provide feedback.

On June 17, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**b. Bias-Free Policing Training**

**Paragraph 48.** *The MCSO shall provide all sworn Deputies, including Supervisors and chiefs, as well as all posse members, with 12 hours of comprehensive and interdisciplinary Training on bias-free policing within 240 days of the Effective Date, or for new Deputies or posse members, within 90 days of the start of their service, and at least 6 hours annually thereafter.*

**In Full and Effective Compliance**

MCSO has combined the Order required Bias-Free Policing Training and the Training on Detentions, Arrests, and the Enforcement of Immigration Laws into a single 20-hour training class titled Fourth and Fourteenth Amendment Training. MCSO mandates that all new deputies, Posse members, and Deputy Service Aides (DSA) receive this Court-ordered training within the first 90 days of their employment or volunteer service.

The 20-hour Fourth and Fourteenth Amendment (Bias-Free Policing) classroom training was not delivered during this reporting period.

MCSO delivered the 2022 ACT 26 times during this reporting period to 602 personnel (543/599 sworn, 40/41 reserve, 146/162 Posse, 9/12 Deputy Service Aides [DSAs]) requiring this training.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 49.** *The Training shall incorporate the most current developments in federal and Arizona law and MCSO policy, and shall address or include, at a minimum:*

- a. *definitions of racial profiling and Discriminatory Policing;*
- b. *examples of the type of conduct that would constitute Discriminatory Policing as well as examples of the types of indicators Deputies may properly rely upon;*
- c. *the protection of civil rights as a central part of the police mission and as essential to effective policing;*
- d. *an emphasis on ethics, professionalism and the protection of civil rights as a central part of the police mission and as essential to effective policing;*
- e. *constitutional and other legal requirements related to equal protection, unlawful discrimination, and restrictions on the enforcement of Immigration-Related Laws, including the requirements of this Order;*
- f. *MCSO policies related to Discriminatory Policing, the enforcement of Immigration-Related Laws and traffic enforcement, and to the extent past instructions to personnel on these topics were incorrect, a correction of any misconceptions about the law or MCSO policies;*
- g. *MCSO's protocol and requirements for ensuring that any significant pre-planned operations or patrols are initiated and carried out in a race-neutral fashion;*
- h. *police and community perspectives related to Discriminatory Policing;*
- i. *the existence of arbitrary classifications, stereotypes, and implicit bias, and the impact that these may have on the decision-making and behavior of a Deputy;*
- j. *methods and strategies for identifying stereotypes and implicit bias in Deputy decision-making;*
- k. *methods and strategies for ensuring effective policing, including reliance solely on non-discriminatory factors at key decision points;*
- l. *methods and strategies to reduce misunderstanding, resolve and/or de-escalate conflict, and avoid Complaints due to perceived police bias or discrimination;*
- m. *cultural awareness and how to communicate with individuals in commonly encountered scenarios;*
- n. *problem-oriented policing tactics and other methods for improving public safety and crime prevention through community engagement;*
- o. *the benefits of actively engaging community organizations, including those serving youth and immigrant communities;*
- p. *the MCSO process for investigating Complaints of possible misconduct and the disciplinary consequences for personnel found to have violated MCSO policy;*

- q. *background information on the Melendres v. Arpaio litigation, as well as a summary and explanation of the Court's May 24, 2013 Findings of Fact and Conclusions of Law in Melendres v. Arpaio, the parameters of the Court's permanent injunction, and the requirements of this Order; and*
- r. *Instruction on the data collection protocols and reporting requirements of this Order.*

**In Full and Effective Compliance**

The Fourth and Fourteenth Amendment Training curriculum was previously approved for delivery. The curriculum requires an annual review in 2022.

The 20-hour Fourth and Fourteenth Amendment (Bias-Free Policing) classroom training was not delivered during this reporting period.

As previously reported, MCSO delivered the 2022 ACT 26 times during this reporting period.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***c. Training on Detentions, Arrests, and the Enforcement of Immigration-Related Laws***

***Paragraph 50.*** *In addition to the Training on bias-free policing, the MCSO shall provide all sworn personnel, including Supervisors and chiefs, as well as all posse members, with 6 hours of Training on the Fourth Amendment, including on detentions, arrests and the enforcement of Immigration-Related Laws within 180 days of the effective date of this Order, or for new Deputies or posse members, within 90 days of the start of their service. MCSO shall provide all Deputies with 4 hours of Training each year thereafter.*

**In Full and Effective Compliance**

MCSO has combined the Order required Bias-Free Policing Training and the Training on Detentions, Arrests, and the Enforcement of Immigration Laws into a single 20-hour training class titled Fourth and Fourteenth Amendment Training. MCSO mandates that all new deputies, Posse members, and Deputy Service Aides (DSA) receive this Court Ordered training within the first 90 days of their employment or volunteer service.

MCSO did not deliver the 20-hour Fourth and Fourteenth Amendment (Training on Detentions, Arrests, and the Enforcement of Immigration-Related Laws) classroom training during this reporting period

As previously reported, MCSO delivered the 2022 ACT 26 times during this reporting period.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 51.** *The Training shall incorporate the most current developments in federal and Arizona law and MCSO policy, and shall address or include, at a minimum:*

- a. *an explanation of the difference between various police contacts according to the level of police intrusion and the requisite level of suspicion; the difference between reasonable suspicion and mere speculation; and the difference between voluntary consent and mere acquiescence to police authority;*
- b. *guidance on the facts and circumstances that should be considered in initiating, expanding or terminating an Investigatory Stop or detention;*
- c. *guidance on the circumstances under which an Investigatory Detention can become an arrest requiring probable cause;*
- d. *constitutional and other legal requirements related to stops, detentions and arrests, and the enforcement of Immigration-Related Laws, including the requirements of this Order;*
- e. *MCSO policies related to stops, detentions and arrests, and the enforcement of Immigration-Related Laws, and the extent to which past instructions to personnel on these topics were incorrect, a correction of any misconceptions about the law or MCSO policies;*
- f. *the circumstances under which a passenger may be questioned or asked for identification;*
- g. *the forms of identification that will be deemed acceptable if a driver or passenger (in circumstances where identification is required of them) is unable to present an Arizona driver's license;*
- h. *the circumstances under which an officer may initiate a vehicle stop in order to investigate a load vehicle;*
- i. *the circumstances under which a Deputy may question any individual as to his/her alienage or immigration status, investigate an individual's identity or search the individual in order to develop evidence of unlawful status, contact ICE/CBP, await a response from ICE/CBP and/or deliver an individual to ICE/CBP custody;*
- j. *a discussion of the factors that may properly be considered in establishing reasonable suspicion or probable cause to believe that a vehicle or an individual is involved in an immigration-related state crime, such as a violation of the Arizona Human Smuggling Statute, as drawn from legal precedent and updated as necessary; the factors shall not include actual or apparent race or ethnicity, speaking Spanish, speaking English with an accent, or appearance as a Hispanic day laborer;*
- k. *a discussion of the factors that may properly be considered in establishing reasonable suspicion or probable cause that an individual is in the country unlawfully, as drawn from legal precedent and updated as necessary; the factors shall not include actual or apparent race or ethnicity, speaking Spanish, speaking English with an accent, or appearance as a day laborer;*
- l. *an emphasis on the rule that use of race or ethnicity to any degree, except in the case of a reliable, specific suspect description, is prohibited;*

- m. *the MCSO process for investigating Complaints of possible misconduct and the disciplinary consequences for personnel found to have violated MCSO policy;*
- n. *Provide all trainees a copy of the Court's May 24, 2013 Findings of Fact and Conclusions of Law in Melendres v. Arpaio and this Order, as well as a summary and explanation of the same that is drafted by counsel for Plaintiffs or Defendants and reviewed by the Monitor or the Court; and*
- o. *Instruction on the data collection protocols and reporting requirements of this Order, particularly reporting requirements for any contact with ICE/CBP.*

**In Full and Effective Compliance**

The Fourth and Fourteenth Amendment Training curriculum was previously approved for 2022 delivery.

The 2022 ACT curriculum was previously approved for delivery.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***d. Supervisor and Command Level Training***

***Paragraph 52.*** *MCSO shall provide Supervisors with comprehensive and interdisciplinary Training on supervision strategies and supervisory responsibilities under the Order. MCSO shall provide an initial mandatory supervisor training of no less than 6 hours, which shall be completed prior to assuming supervisory responsibilities or, for current MCSO Supervisors, within 180 days of the Effective Date of this Order. In addition to this initial Supervisor Training, MCSO shall require each Supervisor to complete at least 4 hours of Supervisor-specific Training annually thereafter. As needed, Supervisors shall also receive Training and updates as required by changes in pertinent developments in the law of equal protection, Fourth Amendment, the enforcement of Immigration-Related Laws, and other areas, as well as Training in new skills.*

**In Full and Effective Compliance**

The 2022 SRELE classroom training was not delivered during this reporting period.

On June 18, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 53.** *The Supervisor-specific Training shall address or include, at a minimum:*

- a. *techniques for effectively guiding and directing Deputies, and promoting effective and constitutional police practices in conformity with the Policies and Procedures in Paragraphs 18–34 and the Fourth and Fourteenth Amendment Training in Paragraphs 48–51;*
- b. *how to conduct regular reviews of subordinates;*
- c. *operation of Supervisory tools such as EIS;*
- d. *evaluation of written reports, including how to identify conclusory, “canned,” or perfunctory language that is not supported by specific facts;*
- e. *how to analyze collected traffic stop data, audio and visual recordings, and patrol data to look for warning signs or indicia of possible racial profiling or unlawful conduct;*
- f. *how to plan significant operations and patrols to ensure that they are race-neutral and how to supervise Deputies engaged in such operations;*
- g. *incorporating integrity-related data into COMSTAT reporting;*
- h. *how to respond to calls from Deputies requesting permission to proceed with an investigation of an individual’s immigration status, including contacting ICE/CBP;*
- i. *how to respond to the scene of a traffic stop when a civilian would like to make a Complaint against a Deputy;*
- j. *how to respond to and investigate allegations of Deputy misconduct generally;*
- k. *evaluating Deputy performance as part of the regular employee performance evaluation; and*
- l. *building community partnerships and guiding Deputies to do the Training for Personnel Conducting Misconduct Investigations.*

**In Full and Effective Compliance**

The 2022 SRELE classroom training was approved for delivery.

On June 18, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

## Section 7: Traffic Stop Documentation and Data Collection

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### **COURT ORDER VIII. TRAFFIC STOP DOCUMENTATION AND DATA COLLECTION AND REVIEW**

For Paragraphs 54 and 55, in particular, we request traffic stop data from MCSO. The following describes how we made that request and how we handled the data once we received it. These data may also be referred to in other areas of Section 7 and the report as a whole.

In selecting traffic stop cases for our compliance review, we modified our statistical technique in that, rather than selecting a representative random sample of 100 cases per quarter, we instead pulled a sample of 35 cases per month (or 105 cases per quarter). Our original selection of a sample size of 35 cases was based on information from MCSO TraCS data that reported the average number of traffic stops per month was fewer than 2,000 during the April 2014-June 2015 period when TraCS data were first available. The selection of 35 cases reflects a sample based on this average per month. This gave us a 95 percent confidence level (the certainty associated with our conclusion).

We continue to pull our monthly sample of traffic stop cases from the MCSO's five Districts (Districts 1, 2, 3, 4, and 7) and Lake Patrol. As noted previously, District 6 is no longer operational as of January 11, 2022, as the Queen Creek Police Department commenced full operations and is now the primary law enforcement agency for that jurisdiction. Once we received files each month containing traffic stop case numbers from MCSO, denoting from which area they came, we selected a sample of up to 35 cases representing the areas and then selected a subsample averaging 10 cases, from the 35 selected cases, to obtain CAD audiotapes and body-worn camera recordings. Our sampling process involved selecting a sample of cases stratified by the areas according to the proportion of specific area cases relative to the total area cases. Stratification of the data was necessary to ensure that each area was represented proportionally in our review. Randomization of the cases and the selection of the final cases for CAD review were achieved using a statistical software package (IBM SPSS Version 22), which contains a specific function that randomly selects cases and that also allows cases to be weighted by the areas. Our use of SPSS required that we first convert the MCSO Excel spreadsheet into a format that would be readable in SPSS. We next pulled the stratified sample each month for the areas and then randomly selected a CAD audio subsample from the selected cases.

In February 2016, we began pulling cases for our body-worn camera review from the audio subsample. Since that time, we began pulling additional samples for passenger contacts and persons' searches (10 each per month). The unique identifiers for these two samples were relayed back to MCSO personnel, who produced documentation for the selected sample (including the CAD documentation for the subsample).

On October 10, 2014, the Court issued an Order Granting Stipulation to Amend Supplemental/Permanent Injunction/Judgment Order (Document 748). The stipulation affects Paragraphs 57, 61, 62, and 1.r.xv.; and has been incorporated in the body of this report. The stipulation referenced amends the First Order, and will be addressed in Section 7.

**a. Collection of Traffic Stop Data**

**Paragraph 54.** *Within 180 days of the Effective Date, MCSO shall develop a system to ensure that Deputies collect data on all vehicle stops, whether or not they result in the issuance of a citation or arrest. This system shall require Deputies to document, at a minimum:*

- a. *the name, badge/serial number, and unit of each Deputy and posse member involved;*
- b. *the date, time and location of the stop, recorded in a format that can be subject to geocoding;*
- c. *the license plate state and number of the subject vehicle;*
- d. *the total number of occupants in the vehicle;*
- e. *the Deputy's subjective perceived race, ethnicity and gender of the driver and any passengers, based on the officer's subjective impression (no inquiry into an occupant's ethnicity or gender is required or permitted);*
- f. *the name of any individual upon whom the Deputy runs a license or warrant check (including subject's surname);*
- g. *an indication of whether the Deputy otherwise contacted any passengers, the nature of the contact, and the reasons for such contact;*
- h. *the reason for the stop, recorded prior to contact with the occupants of the stopped vehicle, including a description of the traffic or equipment violation observed, if any, and any indicators of criminal activity developed before or during the stop;*
- i. *time the stop began; any available data from the E-Ticketing system regarding the time any citation was issued; time a release was made without citation; the time any arrest was made; and the time the stop/detention was concluded either by citation, release, or transport of a person to jail or elsewhere or Deputy's departure from the scene;*
- j. *whether any inquiry as to immigration status was conducted and whether ICE/CBP was contacted, and if so, the facts supporting the inquiry or contact with ICE/CBP, the time Supervisor approval was sought, the time ICE/CBP was contacted, the time it took to complete the immigration status investigation or receive a response from ICE/CBP, and whether ICE/CBP ultimately took custody of the individual;*
- k. *whether any individual was asked to consent to a search (and the response), whether a probable cause search was performed on any individual, or whether a pat-and-frisk search was performed on any individual;*
- l. *whether any contraband or evidence was seized from any individual, and nature of the contraband or evidence; and*
- m. *The final disposition of the stop, including whether a citation was issued or an arrest was made or a release was made without citation.*

**Phase 1: In compliance**

- CP-8 (Preventing Racial and Other Bias-Based Policing), most recently amended on October 13, 2022.
- EA-11 (Arrest Procedures), most recently amended on April 5, 2022.
- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), most recently amended on April 27, 2022.
- EB-2 (Traffic Stop Data Collection), most recently amended on June 15, 2021.
- GI-1 (Radio and Enforcement Communications Procedures), most recently amended on December 8, 2021.
- GJ-3 (Search and Seizure), most recently amended on May 5, 2022.

**Phase 2:** Not in compliance

To verify the information required for this Paragraph, MCSO created, and we reviewed, the Vehicle Stop Contact Form (VSCF), the Vehicle Stop Contact Form Supplemental Sheet, the Incidental Contact Receipt, and the Written Warning/Repair Order, all in electronic form, for those motorists who, during this reporting period, committed a traffic violation or operated a vehicle with defective equipment and received a warning. We also reviewed the Arizona Traffic Ticket and Complaint Forms issued for violations of Arizona Statutes, Internet I/Viewer Event Unit printout, Justice Web Interface printout, and any Incident Report associated with the event. We selected a sample of 105 traffic stops conducted by deputies from July 1-September 30, 2022 for the purposes of this review; and assessed the collected data from the above-listed documents for compliance with Subparagraphs 54.a.-54.m. All of the listed documentation was used for our review of the following subsections of this Paragraph.

The Paragraph requires that MCSO create a system for data collection. The data collected pursuant to this Paragraph will be captured in the Early Identification System, which we discuss further in this report.

In our reviews of the following requirements, we consider whether any compliance issues were identified and addressed by supervisory personnel during the regular review of documents by supervisors. If any such instances are identified, we include such information in this report.

Paragraph 54.a. requires MCSO to document the name, badge/serial number, and unit of each deputy and Posse member involved.

For this reporting period, all of the primary deputies indicated their own serial numbers for every stop they initiated. We review the VSCF, I/Viewer Event document, the Justice Web Interface, and the CAD printout to determine which units were on the scene. If back-up units arrive on a scene and do not announce their presence to dispatch, CAD does not capture this information. MCSO made a TraCS change to the VSCF during 2016 to secure this information. MCSO added a drop-down box so the deputy could enter the number of units on the scene and the appropriate fields would be added for the additional deputies. While this addition is an improvement, if the deputy fails to enter the number of additional units on the form, the drop-down boxes do not appear. In addition, MCSO policy requires deputies to prepare the Assisting Deputy and Body-Worn Camera Log in instances where deputies respond and assist at a traffic stop. The log

contains the relevant information required by this Subparagraph for any additional deputies involved in a traffic stop other than the primary deputy. During our April 2019 site visit, we discussed with MCSO, the Plaintiffs, and the Plaintiff-Intervenor the method of evaluating this requirement. We determined that in instances where a deputy's name, serial number and unit number may have been omitted on the VSCF, yet the deputy prepared the Assisting Deputy and Body-Worn Camera Log, the requirements of this Subparagraph will have been met. During this reporting period, MCSO renamed the Assisting Deputy and Body-Worn Camera Log to the Assisting Employee and/or Volunteer Log. This report will continue to reference the document as the Assisting Deputy and Body-Worn Camera Log since the new log title was introduced during the middle of this review period.

During our review of the sample of 105 vehicle traffic stops, we identified 22 cases where the deputy's unit had another deputy assigned to the vehicle or one or more other deputy units or Posse members were on the scene. In each of the 22 cases, the deputies properly documented the name, serial number, and unit number of the deputies and Posse members on the VSCF, or the information was captured on the Assisting Deputy and Body-Worn Camera Log.

Of the cases we reviewed for passenger contacts under Subparagraph 54.g., there were 52 cases where the deputy's unit had another deputy assigned to the vehicle, or one or more other deputy units or Posse members were on the scene. In each of the 52 cases, the deputies properly documented the required information on the VSCFs, or the information was captured on the Assisting Deputy and Body-Worn Camera Log.

Of the cases we reviewed for searches of persons under Subparagraph 54.k., there were 64 cases where the deputy's unit had another deputy assigned to the vehicle, or one or more other deputies or Posse members were on the scene. In 62 of the 64 cases, the deputies properly documented the required information on the VSCFs or the information was captured on the Assisting Deputy and Body-Worn Camera Logs. In one case, the deputy did not document an assisting deputy on the VSCF and the Assisting Deputy and Body-Worn Camera Log was not prepared. In one case, the deputy documented the presence of a Posse member; however, the serial number of the Posse member was omitted.

We continue to identify cases where the assisting deputies have not prepared the Assisting Deputy and Body-Worn Camera Log when required by MCSO policy. We encourage MCSO to provide guidance to supervisors to be attentive to this issue during their reviews of traffic stop documentation.

During this reporting period, MCSO achieved a compliance rating of 99%. MCSO remains in compliance with this requirement.

Paragraph 54.b. requires MCSO to document the date, time, and location of the stop, recorded in a format that can be subject to geocoding. Our reviews of the CAD printout for all 105 traffic stops in our sample indicated that the date, time, and location is captured with the time the stop is initiated and the time the stop is cleared. In previous reporting periods, we noted instances where the GPS coordinates could not be located on the documentation received (CAD printout/I/Viewer). We contacted MCSO about this issue, and MCSO now provides us with the GPS coordinates via a separate document that lists the coordinates for the traffic stop sample we

provide. MCSO uses GPS to determine location for the CAD system. GPS collects coordinates from three or more satellites to enhance the accuracy of location approximation. The data from the satellites can be decoded to determine the longitude and latitude of traffic stop locations should that be necessary. The CAD system was upgraded in 2014 to include geocoding of traffic stops. CID continues to provide us with a printout of all case numbers in the sample containing the associated coordinates. For this reporting period, the CAD or I/Viewer system contained the coordinates in 63% of the cases. In a separate spreadsheet, MCSO provided GPS coordinates for all 105 cases we reviewed, for 100% compliance with this portion of the Subparagraph.

When we review the sample traffic stops from across all Districts, we note the locations of the stops contained on the VSCF, the CAD printout, and the I/Viewer system to ensure that they are accurate. We continue to identify a limited number of instances where the location of the stop contained on the VSCF and the location of the stop contained on the CAD printout are inconsistent. We continue to recommend that reviewing supervisors closely review the VSCFs and CAD printouts and address such deficiencies. The number of inconsistencies did not affect MCSO's rate of compliance.

During our April 2016 site visit, we discussed with MCSO the possibility of using the CAD printout instead of the TraCS data to determine stop times. We determined that using the CAD system to determine stop end times created additional challenges. However, MCSO decided to use the CAD printout to determine traffic stop beginning and ending times for data analysis. MCSO issued Administrative Broadcast 16-62 on June 29, 2016, which indicated that, beginning with the July 2016 traffic stop data collection, the stop times captured on the CAD system would be used for reporting and analytical purposes.

Occasionally, the CAD time of stop and end of stop time do not exactly match those listed on the Vehicle Stop Contact Form, due to extenuating circumstances the deputy may encounter. During this reporting period, we did not find any instances where the end time on the VSCF Contact differed significantly from the CAD printout. In monthly audits of traffic stop data, the Audits and Inspections Unit (AIU) reviews the beginning/ending times of the stops and requires that BIO Action Forms are generated by the Districts when there are discrepancies. The CAD system is more reliable than the VSCF in determining stop times, as it is less prone to human error. When the deputy verbally advises dispatch that s/he is conducting a traffic stop, the information is digitally time-stamped into the CAD system without human input; and when the deputy clears the stop, s/he again verbally advises dispatch.

MCSO remains in compliance with this Subparagraph.

Paragraph 54.c. requires MCSO to document the license plate and state of the subject vehicle. During this reporting period, in each of the 105 stops that were reviewed, the deputies properly documented the license plate information on the VSCFs and the citations prepared for the stops.

MCSO remains in compliance with this Subparagraph, with a compliance rate of 100%.

Paragraph 54.d. requires MCSO to document the total number of occupants in the vehicle when a stop is conducted. The VSCF, completed by the deputy on every traffic stop, is used to capture the total number of occupants and contains a separate box on the form for that purpose. EB-2 (Traffic Stop Data Collection) requires deputies to collect data on all traffic stops using the VSCF; this includes incidental contacts with motorists.

In 36 of the 105 traffic stops we reviewed, the driver had one or more passengers in the vehicle (64 total passengers). In 35 of the 36 cases, our review determined that the deputies properly documented the total number of occupants in the vehicles. However, in one case, the deputy failed to document a passenger which we identified when we conducted a review of the body-worn camera recording. AIU also conducted a review of this stop and required that the District prepare a BIO Action Form to document any corrective measures taken.

With a compliance rate of 99%, MCSO remains in compliance with this Subparagraph.

Paragraph 54.e. requires MCSO to document the perceived race, ethnicity, and gender of the driver and any passengers, based on the deputy's subjective impression. (No inquiry into the occupant's ethnicity or gender is required or permitted.) In 36 of the 105 stops from the traffic stop data sample, there was more than one occupant in the vehicle (64 total passengers).

Fifty-eight, or 55%, of the 105 traffic stops involved white drivers. Twenty-nine, or 28%, of the 105 stops involved Latino drivers. Twelve, or 11%, of the 105 traffic stops involved Black drivers. Four, or 4%, of the 105 traffic stops involved an American Indian/Alaskan Native American driver. Two, or 2%, of the 105 traffic stops involved Asian or Pacific Islander drivers. Forty-six traffic stops, or 44%, resulted in citations. The breakdown of those motorists issued citations is as follows: 25 white drivers (54% of the drivers who were issued citations); 13 Latino drivers (28% of the drivers who were issued citations); three Black drivers (7% of the drivers who were issued citations); three American Indian/Alaskan Native American drivers (7% of the drivers who were issued citations); and two Asian or Pacific Islander drivers (4% of the drivers who were issued citations). Fifty-eight, or 55%, of the 105 traffic stops we reviewed resulted in a written warning. The breakdown of those motorists issued warnings is as follows: 31 white drivers (53% of the drivers who were issued warnings); 16 Latino drivers (28% of the drivers who were issued warnings); nine Black drivers (16% of the drivers who were issued warnings); and one American Indian/Alaskan Native American driver (2% of the drivers who were issued warnings). There was one driver who was arrested for driving under the influence and was not issued a citation or warning. The deputy prepared a report documenting the stop and investigation for the review of the Maricopa County Attorney's Office for potential criminal charges.

In our sample of 30 traffic stops that contained body-worn camera recordings, we identified two stops where the deputy did not accurately document the perceived race, ethnicity, and gender of the passengers in the vehicle. In one stop, the deputy indicated on the VSCF that the driver was the only occupant of the vehicle. However, based on our review of the body-worn recording, there was a passenger clearly visible seated in the front seat, with no obstructions. AIU identified this issue as well during their inspection and required the District to prepare a BIO Action Form to document any corrective measures taken. We also identified one additional stop that was not identified by AIU in which the passenger was listed as a female, with unknown listed in the race/ethnicity field. However, based on our review of the body-worn camera recording, the

passenger was observed seated in the front passenger, with no obstructions present, and the race/ethnicity of the passenger could be clearly identified. There were two cases that were identified where the VSCF field for the race/ethnicity contained information inconsistent with the information contained in the corresponding field on the citation. In one of these cases, the deputy indicated that the driver was Hispanic on the VSCF and white on the citation. In the other case, the deputy indicated that the driver was Hispanic on the VSCF and Black on the citation. AIU identified these two cases as well, and required that the Districts prepare BIO Action Forms to document any corrective measures taken. In our review of cases to assess compliance with Paragraph 54.k., we identified one stop in which the deputy indicated on the VSCF that the driver was the only occupant of the vehicle. However, based on our review of the body-worn recording, there was a passenger clearly visible; and the assisting deputy was observed advising the passenger that the driver was under arrest. In our review of cases to assess compliance with Paragraphs 25.d. and 54.g., passenger contacts, we did not identify any stops in which the deputies did not accurately document the perceived race, ethnicity, and gender of the vehicle occupants.

This Paragraph requires deputies to document the perceived race, ethnicity, and gender of any passengers whether contact is made with them or not. There were some instances where deputies indicated that they were unable to determine the gender and ethnicity of a passenger and listed the passenger as “unknown-vision obscured.” During our review of the body-worn camera recordings, we were also unable to get a clear view of some of the passengers, often due to vehicle being equipped with dark tinted windows combined with the stop occurring during nighttime hours; or due to vehicle being equipped with dark tinted windows combined with the glare of the sun during daytime hours.

During the second quarter of 2019, AIU commenced conducting the Post-Stop Perceived Ethnicity Inspection. This inspection is conducted on a monthly basis and includes: 1) a review of traffic stops where the deputy documented the driver as being white and the driver’s surname is Latino; 2) a review of traffic stops where the deputy documented that the driver has a Latino surname with a passenger listed as “unknown-vision obscured;” and 3) a review of traffic stops where the deputy documented that the driver was Latino and the passengers were listed with a designated ethnicity on the VSCF. AIU continues to conduct these inspections on a monthly basis. AIU requires that the Districts prepare Action Forms to address any issues identified.

MCSO remains in compliance with this requirement.

Paragraph 54.f. requires that MCSO record the name of any individual upon whom the deputy runs a license or warrant check (including the subject’s surname). In addition, MCSO’s policy requires that deputies perform a license plate check on each vehicle stopped by its deputies, as well as warrant checks on every driver stopped by its deputies. Our reviews have found that deputies regularly record the name of each driver and passenger on the VSCF in each instance where they have run a driver’s license or warrant check.

MCSO policy requires that during each traffic stop, deputies are to conduct records checks on the license plate and a wants/warrant check on each driver. For this reporting period, we found that of the 105 traffic stops we reviewed, each of the 105 stops included a check on the license plate. There were 101 stops where the deputies ran warrant checks on the drivers in accordance with MCSO policy.

MCSO's compliance rate with this requirement is 100%. MCSO remains in compliance with this Subparagraph.

Paragraph 54.g. requires the deputy to document whether contact was made with any passengers, the nature of the contact, and the reasons for the contact. During the third quarter of 2019, MCSO requested that we increase the number of cases reviewed to identify additional stops that fit the criteria of this Paragraph. The sample size of cases to be reviewed was increased from 10 stops each month to 35 stops each month, commencing with August 2019. During some months, the number of traffic stops that involve deputies having contact with passenger is fewer than 35 traffic stops.

During our assessment, we specifically review traffic stops that include any instance where the deputy asks any questions of a passenger beyond a greeting, including asking passengers to identify themselves for any reason or requesting that they submit to a Preliminary Breath Test. In such instances, we determine if the passenger was issued one of the following: Incidental Contact Receipt, citation, or a warning. If the passenger was not issued any one of the following documents, it adversely impacts MCSO's compliance with this requirement. It is also important to note that in such instances where a deputy fails to issue one of the required documents after being involved in a passenger contact, it is a violation of MCSO's policy.

To ensure that deputies are accurately capturing passenger information and to verify if passengers are contacted, we compare the number of passengers listed by the deputy with the number of passengers entered in the passenger drop-down box on the Vehicle Stop Contact Form. We also review any Incidental Contact Receipts, citations, or warnings, issued to passengers by deputies. We also review the deputies' notes on the VSCF, the Arizona Citation, and the CAD printout for any information involving the passengers. We review MCSO's I/Viewer System and the Justice Web Interface (JWI) to verify if a records check was requested for the driver or any passengers.

All passenger contacts in the traffic stops we reviewed for Paragraphs 25.d. and 54.g were noted in the VSCFs. For this reporting period, we identified 68 traffic stops where the deputy had interaction with one or more passengers which required the issuance of either an Incidental Contact Receipt, a citation, or a warning. Of the 68 stops, there were 11 stops where we determined that a passenger, or passengers, were not provided with either an Incidental Contact Receipt, a citation, or a warning, as required by MCSO policy. For the remaining 57 stops, the passengers were properly provided with either an Incidental Contact Receipt, a citation, or a warning. In one case that we informed MCSO of, AIU investigated and determined that the deputy in fact prepared an Incidental Contact Receipt on the same date as the traffic stop, although it was prepared after the conclusion of the traffic stop. After our inquiry regarding the issue, the Incidental Contact Receipt was mailed to the passenger.

In another case that we informed MCSO of, AIU investigated and determined that the deputy did not provide the passenger with an Incidental Contact Receipt after she submitted to a preliminary breath test. In addition, the deputy did not obtain the address or name of the passenger, so it was not possible to mail the document to the passenger. Although not as frequently as in the past, we continue to be provided with Incidental Contact Receipts for some of the stops; however, based on our reviews of the body-worn camera recordings, the documents were not provided to the passengers prior to the conclusion of the stop; and there were no exigent or unusual circumstances that precluded the issuance of the documents.

There were 13 cases identified in the stops that we reviewed for Paragraph 54.k. in which the passengers were contacted which required the issuance of either an Incidental Contact Receipt, a citation, or a warning. In one case, the passenger was not provided with either an Incidental Contact Receipt, a citation, or a warning, as required by MCSO policy. The deputy erroneously prepared a Non-Traffic Contact Form to document the contact with the passenger.

There were six cases identified in the stops that we reviewed for Paragraphs 25 and 54 in which passengers were contacted, which required the issuance of either an Incidental Contact Receipt, a citation, or a warning. In five cases, the deputies did not provide the passengers with Incidental Contact Receipts as required. AIU identified four of these cases during their inspection and required the Districts to prepare BIO Action Forms to document any corrective measures taken. In one case, the deputy properly provided an Incidental Contact Receipt to the passenger.

MCSO continues to conduct internal inspections to review its own sample of passenger contacts during traffic stops. In any instances where issues are identified, AIU issues BIO Action Forms to the Districts to address those deficiencies.

As noted in some of the cases above, deputies have not been consistent in preparing and providing passengers with Incidental Contact Receipts during traffic stops in which the passenger is contacted and asked by the deputy to provide identification. Supervisors should identify such errors and omissions during their reviews of the VSCFs and take corrective action. In previous reporting periods, MCSO has informed us that some supervisors have identified incidents where deputies have failed to provide the Incidental Contact Receipts and then had the deputies mail the receipts. However, the documentation that the receipts have been mailed is not listed on the VSCFs. MCSO previously informed us that the TraCS system was modified so that when a deputy prepares the Vehicle Stop Contact Form and uses the passenger contact field, a prompt will appear to instruct the deputy to prepare the Incidental Contact Receipt. MCSO recently informed us that the modifications to the TraCS system are still in the development and review stages, along with other modifications to the TraCS system.

During the first reporting period of 2022, MCSO provided the Incidental Contact Receipt, a citation, or a warning, when required in 87% of the cases. During the second reporting period of 2022, MCSO provided the Incidental Contact Receipt, a citation, or a warning, when required in 81% of the cases. During this reporting period, MCSO provided the Incidental Contact Receipt, a citation, or a warning, when required in 85% of the cases. MCSO is not in compliance with this Subparagraph.

Paragraph 54.h. requires deputies to record, prior to the stop, the reason for the vehicle stop, including a description of the traffic or equipment violation observed, and any indicators of criminal activity developed before or during the stop. For this reporting period, we identified a random sample of 10 cases from the 35 cases we initially requested each month, and requested CAD audio and body-worn camera footage for those cases. We listened to CAD dispatch audio recordings, reviewed the CAD printouts, and reviewed body-worn camera recordings for 30 traffic stops from the sample of 105 traffic stops used for this review; and found that the deputies advised Communications of the reason for the stop, location of the stop, license plate, and state of registration for all 30 stops.

For the remaining 75 traffic stops where body-worn camera recordings and CAD audiotapes were not requested, we review the CAD printout and the VSCF to ensure that the reason for the stop has been captured. These forms are included in our monthly sample requests. The dispatcher enters the reason for the stop in the system as soon as the deputy verbally advises Communications of the stop, location, and tag number. The VSCF and the CAD printout documents the time the stop begins and when it is concluded – either by arrest, citation, or warning. Deputies need to be precise when advising dispatch of the reason for the traffic stop, and likewise entering that information on the appropriate forms.

MCSO's compliance rating for this Subparagraph is 100%.

Paragraph 54.i. requires deputies to document the time the stop began; any available data from the E-Ticketing system regarding the time any citation was issued; the time a release was made without a citation; the time any arrest was made; and the time the stop/detention was concluded either by citation, release, or transport of a person to jail or elsewhere, or the deputy's departure from the scene. In our review of the documentation provided by MCSO, the CAD printouts, the Vehicle Stop Contact Forms, along with the E-Ticketing system and the Arizona Ticket and Complaint Form, the information required is effectively captured. As we noted in Subparagraph 54.b., the stop times on the CAD printout and the Vehicle Stop Contact Form vary slightly on occasion. We understand that this may occur due to extenuating circumstances, and we will report on those instances where there is a difference of five minutes or more from either the initial stop time or the end time.

We review the circumstances of each stop and the activities of the deputies during each stop to assess whether the length of the stop was justified. During this reporting period, we did not identify any stops that were extended for an unreasonable amount of time.

Supervisors are required to conduct reviews of the VSCFs within 72 hours of the stop. In each of the 105 VSCFs reviewed, the supervisors conducted timely reviews. Deputies accurately entered beginning and ending times of traffic stops in all 105 cases reviewed. MCSO accurately entered the time citations and warnings were issued in each of the 105 cases reviewed.

MCSO remains in compliance with this Subparagraph.

Paragraph 54.j. requires MCSO to document whether any inquiry as to immigration status was conducted and whether ICE/CBP was contacted, and if so, the facts supporting the inquiry or contact with ICE/CBP, the time supervisor approval was sought, the time ICE/CBP was

contacted, the time it took to complete the immigration status investigation or receive a response from ICE/CBP, and whether ICE/CBP ultimately took custody of the individual.

On November 7, 2014, a United States District Court Judge issued an Order permanently enjoining enforcement of Arizona Revised Statute (A.R.S.) 13-2319, commonly referred to as the Arizona Human Smuggling Act. On November 17, 2014, MCSO issued Administrative Broadcast 14-75, prohibiting deputies from enforcing the above state statute, including arresting, detaining, or questioning persons for suspected (or even known) violations of the act and from extending the duration of traffic stops or other deputy-civilian encounters to do so.

We reviewed 105 traffic stops submitted for this Paragraph, and found that none of the stops involved any contacts with ICE/CBP. None of the stops we reviewed involved any inquires as to immigration status. In addition, our reviews of Incident Reports and Arrest Reports conducted as part of the audits for Paragraphs 89 and 101 revealed no immigration status investigations. MCSO remains in compliance with this Subparagraph. In addition, we monitor any complaints involve any traffic stops that contain an allegation that the race/ethnicity of the driver was a factor in how a driver was treated. There were no such allegations identified during this reporting period.

Paragraph 54.k. requires MCSO to document whether any individual was asked to consent to a search (and the response), whether a probable-cause search was performed on any individual, or whether a pat-and-frisk search was performed on any individual. During our January 2018 site visit, we discussed with MCSO whether any other method may be feasible to identify a larger population of searches of individuals specific to the requirements of this Paragraph. MCSO's response was that the current method is appropriate, and that there may be more cases identified once deputies properly document the searches of persons consistent with this Paragraph.

MCSO provided training to deputies specific to consent searches during the 2019 Annual Combined Training on the Fourth and Fifth Amendment, which included a video that contained a scenario with a verbal exchange between a driver and a deputy who requested a consent search. In addition, on March 10, 2020, MCSO issued Administrative Broadcast Number 20-20, which reemphasized the training segment in relation to consent searches.

The method MCSO currently employs to identify our sample of cases to review is to identify the population of all traffic stops in which searches of individuals were documented on the VSCF. Once that population was identified, a random sample of 35 traffic stops from each month is identified for review. During some months, the number traffic stops that involve searches of persons is less than 35 traffic stops. In addition, we also review any cases in which the deputies performed searches of individuals in the sample of 105 traffic stops reviewed to assess compliance with Paragraphs 25 and 54 and the sample of traffic stops reviewed to assess compliance with Subparagraphs 25.d. and 54.g. When we identify issues that impact compliance or where MCSO policy was not followed, we provide the list of cases to MCSO for review.

In the sample of traffic stops that we reviewed to assess compliance with Subparagraph 54.k, we identified seven stops involving the search of seven persons. In each case, the deputies properly documented the searches on the VSCF.

During this reporting period, there was three stops involving the search of four persons identified in the sample of traffic stops reviewed to assess compliance with Subparagraphs 25.d. and 54.g. There was one additional case in which the deputy requested the consent of the driver to conduct a search. The driver did not consent to the search and there was no search conducted by the deputy. In each case, the deputies properly documented the searches and the request and declination to conduct a search on the VSCF.

During this reporting period, there was one stop involving the search of a person identified in the sample of traffic stops reviewed to assess compliance with Paragraphs 25 and 54. In that one case, the deputy properly documented the search on the VSCF.

The total number of searches of persons assessed during this reporting period was 13. In each of the 13 cases, the deputies properly documented the searches and the one requested consent search of the vehicle occupants on the VSCFs.

During this reporting period, there were no traffic stops identified in which deputies presented the Consent to Search Forms to document when consent was requested and obtained to search any vehicle occupants. MCSO has indicated that it does not require its deputies to use Consent to Search Forms as the primary means for documenting consent searches. MCSO requires that deputies document requests to conduct consent searches by way of video-recording the event via the body-worn cameras. In the event the body-worn camera is not operational, MCSO policy requires deputies to document requests to conduct consent searches on the Consent to Search Form. We continue to recommend that MCSO revisit the requirements of this section of the policy and require deputies to read the Consent to Search Form to the subject and require a signature from the individual for every request for consent to search.

MCSO continues to conduct internal inspections to review its own sample of searches of vehicle occupants during traffic stops. In any instances where issues are identified, AIU issues BIO Action Forms to the Districts to address those deficiencies.

During the first reporting period of 2022, MCSO achieved a compliance rating of 91%. We reported that MCSO would remain in compliance with this requirement for that reporting period; however, in order to remain in compliance in the next reporting period, MCSO would need to attain a compliance rating of greater than 94. During the second reporting period of 2022, MCSO attained a compliance rating of 100% and MCSO remained in compliance with this requirement. During this reporting period, MSCO attained a compliance rating of 100%. MCSO remains in compliance with this requirement.

Paragraph 54.l. requires MCSO to document whether any contraband or evidence was seized from any individual, and the nature of the contraband or evidence. Generally, deputies seize the following types of contraband and/or evidence, which is documented on the VSCF, a Property Receipt, and an Incident Report: license plates; driver's licenses; alcoholic beverages; narcotics; narcotic paraphernalia; weapons; and ammunition. We conduct a review of the relevant documents and review the VSCF to ensure that deputies properly document the seizure of the evidence and/or contraband.

During our review of the collected traffic stop data (our sample of 105) during this reporting period, there was one item seized – a driver’s license – which was placed into evidence by a deputy. However, the item was not properly documented on the VSCF, as required by MCSO policy. AIU identified the same issue and required that the District prepare a BIO Action Form to address any corrective measures taken.

In the cases we reviewed for searches of individuals under Subparagraph 54.k., there were 29 items seized by deputies and placed into evidence. Of those 29 items, there was one item that was seized and placed into evidence and the item was not properly listed on the VSCF, as required by MCSO policy.

In the cases we reviewed for passenger contacts under Subparagraph 54.g., there were 12 items seized by deputies and placed into evidence. Of those 12 items, there was one item seized and placed into evidence that was not properly listed on the VSCF, as required by MCSO policy.

In previous reporting periods, we noted an increase in the number of errors and omissions by deputies documenting the seizure of contraband or evidence on VSCFs; however, in the three most recent reporting periods, MCSO has improved in this area. During the first reporting period of 2022, MCSO attained a compliance rating of 92%. During the second reporting period of 2022, MCSO attained a compliance rating of 92%. During this reporting period, MCSO attained a compliance rating of 93%. MCSO is not in compliance with this requirement.

Paragraph 54.m. requires the documentation of the final disposition of the stop, including whether a citation was issued or an arrest was made or a release was made without a citation. In all 105 cases we reviewed, we found documentation indicating the final disposition of the stop; and whether the deputy made an arrest, issued a citation, issued a warning, or made a release without a citation. MCSO remains in compliance with this Subparagraph.

MCSO has failed to achieve compliance with all of the Subparagraphs of Paragraph 54. MCSO is not in compliance with Paragraph 54.

***Paragraph 55.** MCSO shall assign a unique ID for each incident/stop so that any other documentation (e.g., citations, incident reports, tow forms) can be linked back to the stop.*

### **In Full and Effective Compliance**

To verify compliance for this Paragraph, we reviewed a sample of the Vehicle Stop Contact Forms, CAD printouts, I/Viewer documentation, citations, warning forms, and any Incident Report that may have been generated as a result of the traffic stop.

The unique identifier “went live” in September 2013 when the CAD system was implemented. This number provides the mechanism to link all data related to a specific traffic stop. The number is automatically generated by the CAD software and is sent to the deputy’s MDT at the time the deputy advises Communications of the traffic stop. The unique identifier is visible and displayed at the top of the CAD printout and also visible on the Vehicle Stop Contact Form, the Arizona Traffic Citation, and the Warning/Repair Form.

Once the deputy scans the motorist's driver's license, the system automatically populates most of the information into one or more forms required by the Order. If the data cannot be entered into TraCS from the vehicle (due to malfunctioning equipment), policy requires the deputy to enter the written traffic stop data electronically prior to the end of the shift. The start and end times of the traffic stop are now auto-populated into the Vehicle Stop Contact Form from the CAD system.

Since our first visit for monitoring purposes in June 2014, TraCS has been implemented in all Districts; and the unique identifier (CFS number) is automatically entered from the deputy's MDT. No user intervention is required.

To determine compliance with this requirement, we reviewed 105 traffic stop cases and reviewed the CAD printouts and the Vehicle Stop Contact Forms for all stops. We reviewed the Warning/Repair Forms, when applicable, for those stops where a warning was issued or the vehicle had defective equipment. The unique identification number assigned to each event was listed on correctly on all CAD printouts for every stop. A review was conducted of the Tow Sheets prepared by deputies in instances where a driver's vehicle is towed. In each instance, the unique identification number assigned to each event was listed correctly on the Tow Sheet. A review of the Incident Reports prepared by deputies in instances where policy requires the preparation of the report was conducted. In each instance, the unique identification number assigned to each event was listed correctly on the Incident Report. MCSO remains in compliance with this requirement.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 56.*** *The traffic stop data collection system shall be subject to regular audits and quality control checks. MCSO shall develop a protocol for maintaining the integrity and accuracy of the traffic stop data, to be reviewed by the Monitor pursuant to the process described in Section IV.*

**Phase 1:** In compliance

- EB-2 (Traffic Stop Data Collection), most recently amended on June 15, 2021.
- Traffic Stop Analysis Unit Operations Manual, Section 304, published on June 8, 2018.
- Traffic Stop Analysis Unit Operations Manual, Section 305, published on November 7, 2018.
- Traffic Stop Analysis Unit Operations Manual, Section 306, published on August 5, 2019.

**Phase 2:** In compliance

As discussed in Paragraph 25, improvements since 2015 in the TraCS system have enhanced the reliability and validity of the traffic stop data. These improvements were memorialized in the Traffic Stop Analysis Unit (TSAU) Operations Manual. While the manual is not fully approved, Sections 304 305, and 306 – which pertain to the data quality control processes – have been

approved since 2018 and 2019. These processes include three distinct areas. One is the data-handling procedures (Section 304), which involve the transfer of data files between administrative units with MCSO for the purpose of data analysis and reporting to ensure that data variables are properly understood. Another process involves the software change control processes (Section 305), which is used by MCSO's Technology Management Bureau to manage software changes that affect traffic stop data variables. Finally, the other process involves the data verification process (Section 306), which involves validating data variables used for the periodic analyses (monthly, quarterly, and annual) discussed in Paragraphs 64, 65, and 66. In general, the EIU and Technology Management Bureau hold monthly meetings (de-confliction meetings) focused on the data-handling procedures and the software changes. EIU manages the data validation process before running periodic analyses.

With the advent of the TSMR pilot in 2021, EIU refined its data-cleaning procedures to ensure a timelier review of the monthly data to correct problems with certain traffic stop location information (X,Y coordinates). Additionally, MCSO adopted alternative methods, following months of discussions between representative experts, in February 2022 for refining stop location and the timing of stops (spline procedures) that make comparisons between deputy stops much more accurate. More recently, MCSO found that special assignment traffic stops were undercounted in past annual reports and is investigating the extent of the undercount; the impact this has had on past annual and monthly reports; and how to improve training and policy to more easily identify such stops in future analyses. The cleaning procedures MCSO has adopted are an enhancement of the quality control process and ensure timely reviews of data to support monthly analyses of traffic stop data. (See Paragraph 64.) MCSO consistently advises us of problems it identifies from these reviews and actions it takes to ensure data veracity following the specific protocols delineated in the TSAU Operations Manual. As such, MCSO, based upon findings from Quarterly Traffic Stop analyses, added two new Extended Stop Indicators (ETSIs) to the dropdown box on VSCFs this quarter (license and "other issues") that may elongate a traffic stop. Deputies are expected to explain these extensions with clarifying comments. We will continue to examine the use of these fields in our reviews of the traffic stop samples selected each month.

MCSO also conducts audits of the 105 traffic stop sample that we request each reporting period. MCSO is also expanding its audits to include a more expansive review of 30 of the 105 sample pulls we request each reporting period to include passenger contacts and persons' searches. EB-2 (Traffic Stop Data Collection) also requires regularly scheduled audits of traffic stop data on a monthly basis. We reviewed BIO's monthly audits of the traffic samples for this quarter and found them to be thorough. Our compliance calculations for this period were slightly lower due to the fact that we do not employ a matrix to assess compliance, but rather judge individual cases as deficient if any significant information is determined not to be consistent across traffic stop forms or CAD. MCSO reported compliance rates of 98.9% for July, and 99.60% for both August and September; while our rates were 86%, 91.5%, and 85.8% respectively, due to incorrect locations, reasons for the stop or Incidental Contact Receipts.

Administrative Broadcast 15-96 addresses the security of paper traffic stop forms. The procedure requires that paper forms (related to traffic stop data that may be handwritten by deputies in the field if the TraCS system is nonoperational due to maintenance or lack of connectivity) be stored

in a locked cabinet and overseen by the Division Commander. Because of the COVID-19 pandemic, we have been unable to travel to Maricopa County and visit the Districts to confirm that all records were locked and secure, that logs were properly maintained, and that only authorized personnel had access to these files. This activity will be delayed until we are able to resume our in-person site visits. However, we note that MCSO has a consistent and long-standing track record of complying with this requirement.

***Paragraph 57.** MCSO shall explore the possibility of relying on the CAD and/or MDT systems to check if all stops are being recorded and relying on on-person recording equipment to check whether Deputies are accurately reporting stop length. In addition, MCSO shall implement a system for Deputies to provide motorists with a copy of non-sensitive data recorded for each stop (such as a receipt) with instructions for how to report any inaccuracies the motorist believes are in the data, which can then be analyzed as part of any audit. The receipt will be provided to motorists even if the stop does not result in a citation or arrest.*

### **In Full and Effective Compliance**

To verify compliance for this Paragraph, we reviewed all TraCS forms for each traffic stop that were included in the sample. In addition, we reviewed a subset of CAD audio recordings and body-worn camera footage of the stops.

The system for providing “receipts” is outlined in EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance) and EB-2 (Traffic Stop Data Collection). GJ-35 addresses the requirement that supervisors review recordings to check whether deputies are accurately reporting stop length. In addition to GJ-35, BIO developed a Body-Worn Camera Matrix for its inspectors to review camera recordings.

The deputy should provide every person contacted on a traffic stop with an Arizona Traffic Ticket or Complaint (Citation), a Written Warning/Repair Order (Warning), or an Incidental Contact Receipt. For this reporting period, deputies issued either citations, written warnings or Incidental Contact Receipts in each of the 105 cases we reviewed.

For the cases reviewed under Subparagraphs 25.d. and 54.g., contact with passengers, we did not identify any issues with the citations, warnings, and Incidental Contact Receipts issued to drivers.

For the cases reviewed under Subparagraph 54.k., searches of persons, we did not identify any issues with the citations, warnings, and Incidental Contact Receipts issued to drivers.

MCSO’s compliance rate with this requirement is 100%. MCSO remains in compliance with this portion of the Subparagraph.

The approved policies dictate that the CAD system will be used for verification of the recording of the initiation and conclusion of the traffic stop and that MCSO will explore the possibility of relying on the body-worn camera recordings to verify that the stop times reported by deputies are accurate. The deputy verbally announces the stops initiation and termination on the radio, and then CAD permanently records this information. In May 2016, MCSO advised us that all deputies and sergeants who make traffic stops had been issued body-worn cameras and that they were fully

operational. We verified this assertion during our July 2016 site visit; and since that time, we have been reviewing the body-worn camera recordings to determine if stop times indicated by CAD were accurate. MCSO's Audit and Inspections Unit (AIU) conducts monthly inspections of traffic stop data, which includes an assessment as to whether the body-worn camera video captured the traffic stop in its entirety; to verify the time the stop began; and to verify if all information on forms prepared for each traffic stop match the body-worn camera video. AIU conducts reviews of 30 body-worn camera recordings each reporting period.

During this reporting period, we requested from MCSO 30 body-worn camera recordings for our review. We are able to use the body-worn camera recordings that were provided for each stop to assess whether deputies are accurately reporting the stop length. The compliance rate for the sample of 30 cases selected from the 105 stops reviewed for using the body-worn camera recordings to determine if deputies are accurately reporting stop length is 100%. MCSO remains in compliance with this requirement.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 58.** The MCSO shall ensure that all databases containing individual-specific data comply with federal and state privacy standards governing personally identifiable information. MCSO shall develop a process to restrict database access to authorized, identified users who are accessing the information for a legitimate and identified purpose as defined by the Parties. If the Parties cannot agree, the Court shall make the determination.*

### **In Full and Effective Compliance**

To verify compliance for this Paragraph, we reviewed the applicable policies and requested that Technology Management Bureau personnel provide us with information regarding any unauthorized access and/or illegitimate access to any of MCSO's database systems that had been investigated by PSB. The policies state that the dissemination of Criminal History Record Information (CHRI) is based on federal guidelines, Arizona statutes, the Department of Public Safety (ASDPS), and the Arizona Criminal Justice Information System (ACJIS); and that any violation is subject to fine. No secondary dissemination is allowed. The policies require that the Professional Standards Bureau (PSB) provide written notification to the System Security Officer whenever it has been determined that an employee has violated the policy by improperly accessing any Office computer database system. Every new recruit class receives three hours of training on this topic during initial Academy training.

During this reporting period, we inquired whether there had been any instances of unauthorized access to and/or any improper uses of the database systems. MCSO informed us that during this reporting period there were no closed cases in which there was a finding that there was unauthorized access to and/or any improper uses of MCSO's database systems. MCSO remains in compliance with this requirement.

On June 22, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 59.** Notwithstanding the foregoing, the MCSO shall provide full access to the collected data to the Monitor and Plaintiffs' representatives, who shall keep any personal identifying information confidential. Every 180 days, MCSO shall provide the traffic stop data collected up to that date to the Monitor and Plaintiffs' representatives in electronic form. If proprietary software is necessary to view and analyze the data, MCSO shall provide a copy of the same. If the Monitor or the Parties wish to submit data with personal identifying information to the Court, they shall provide the personally identifying information under seal.*

#### **In Full and Effective Compliance**

Electronic traffic stop data capture began on April 1, 2014. The forms created by MCSO capture the traffic stop details required by MCSO policy and Paragraphs 25 and 54. BIO provides the traffic stop data on a monthly basis, which includes a spreadsheet of all traffic stops for the reporting period, listing Event Numbers as described at the beginning of Section 7. All marked patrol vehicles used for traffic stops are now equipped with the automated TraCS system, and all Patrol deputies have been trained in TraCS data entry. MCSO has provided full access to all available electronic and written collected data since April 1, 2014. MCSO did not collect electronic data before this time. During this reporting period, MCSO has continued to provide full access to the traffic stop data.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

#### ***b. Electronic Data Entry***

***Paragraph 60.** Within one year of the Effective Date, the MCSO shall develop a system by which Deputies can input traffic stop data electronically. Such electronic data system shall have the capability to generate summary reports and analyses, and to conduct searches and queries. MCSO will explore whether such data collection capability is possible through the agency's existing CAD and MDT systems, or a combination of the CAD and MDT systems with a new data collection system. Data need not all be collected in a single database; however, it should be collected in a format that can be efficiently analyzed together. Before developing an electronic system, the MCSO may collect data manually but must ensure that such data can be entered into the electronic system in a timely and accurate fashion as soon as practicable.*

#### **In Full and Effective Compliance**

To verify compliance with this Paragraph, we reviewed the documents generated electronically that capture the required traffic stop data. The electronic data entry of traffic stop data by deputies in the field went online on April 1, 2015. If TraCS experiences a malfunction in the field, there is a protocol that requires the deputy to electronically enter the traffic stop data prior to the end of the shift.

MCSO continues to conduct monthly traffic stop inspections and forwards them for our review. Initially, the traffic stop data was captured on handwritten forms created by MCSO, completed by the deputy in the field, and manually entered in the database by administrative personnel located at each District. Now all traffic stop data is entered electronically, whether in the field or at MCSO District offices. Occasionally, connectivity is lost in the field due to poor signal quality, and citations are handwritten. Per policy, deputies must enter electronically any written traffic stop data they have created by the end of the shift in which the event occurred. As noted in our Paragraph 90 review, VSCFs are routinely entered into the system by the end of the shift.

Deputies have demonstrated their ability to access and use TraCS, as evidenced by the fact that their total time on a traffic stop averages 16 minutes or less.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

### ***c. Audio-Video Recording of Traffic Stops***

***Paragraph 61.*** *The MCSO will issue functional video and audio recording equipment to all patrol deputies and sergeants who make traffic stops, and shall commence regular operation and maintenance of such video and audio recording equipment. Such issuance must be complete within 120 days of the approval of the policies and procedures for the operation, maintenance, and data storage for such on-person body cameras and approval of the purchase of such equipment and related contracts by the Maricopa County Board of Supervisors. Subject to Maricopa County code and the State of Arizona's procurement law, The Court shall choose the vendor for the video and audio recording equipment if the Parties and the Monitor cannot agree on one.*

### **In Full and Effective Compliance**

During our September 2014 site visit, we met with two MCSO Deputy Chiefs and other personnel to discuss MCSO's progress of acquiring in-car video and audio equipment for all patrol vehicles used to conduct traffic stops. MCSO had initially set out to purchase fixed in-car cameras as required by the Order, but expressed an interest in acquiring body-worn video and audio recording devices for deputies. The Court issued an Order providing an amendment/stipulation on October 10, 2014, requiring on-body cameras. This was a prudent decision, in that it allows for capturing additional data, where a fixed mounted camera has limitations. We have documented MCSO's transition from in-car to body-worn cameras in our previous quarterly status reports.

Records indicate that MCSO began distribution of body-worn cameras on September 14, 2015, and full implementation occurred on May 16, 2016. The body-worn camera recordings are stored in a cloud-based system (on evidence.com) that can be easily accessed by supervisors and command personnel. The retention requirement for the recordings is three years. In July 2019, MCSO began distribution of the newer version of body-worn cameras to deputies. During our October 2019 site visit, MCSO reported that deputies assigned to the Districts have all been equipped with the new body-worn cameras; and that deputies in specialized assignments were being equipped with the new devices. The new version of body-worn cameras purchased by MCSO is mounted on the chest area via a magnetic mount. In addition, the devices are self-contained, meaning that the device does not have any cords or wires that may become disconnected, which had been a recurring problem with the previous devices.

To verify that all Patrol deputies have been issued body-worn cameras, and properly use the devices, we review random samples of the traffic stops as described in Paragraphs 25 and 54. In addition, during our District visits in January 2020, we observed that deputies were equipped with body-worn cameras. Because of the COVID-19 pandemic, we were unable to travel to Maricopa County and visit the Districts to observe deputies being equipped with the body-worn cameras. However, it is clear that MCSO maintains a robust deployment of body-worn cameras, given the ready availability of recordings for our review, and our observations of deputies properly wearing the cameras in the videos we inspect. Our inspections will commence once we are able to resume our in-person site visits.

On December 9, 2019, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 62.*** *Deputies shall turn on any video and audio recording equipment as soon the decision to initiate the stop is made and continue recording through the end of the stop. MCSO shall repair or replace all non-functioning video or audio recording equipment, as necessary for reliable functioning. Deputies who fail to activate and to use their recording equipment according to MCSO policy or notify MCSO that their equipment is nonfunctioning within a reasonable time shall be subject to Discipline.*

**Phase 1:** In compliance

- GJ-35 (Body-Worn Cameras), most recently amended on February 2, 2022.
- Body-Worn Camera Operations Manual, published on December 22, 2016.

**Phase 2:** In compliance

MCSO evaluated on-person body cameras from other jurisdictions and selected a vendor (TASER International, now known as Axon). Body-worn cameras have been implemented in all Districts since May 2016 and are fully operational. As mentioned under Paragraph 61, MCSO has obtained, and has equipped the deputies in the Districts with new body-worn cameras, also provided by Axon.

To verify compliance for this Paragraph, we reviewed the body-worn camera recordings included in our monthly samples. This includes the stops reviewed each month for Paragraphs 25 and 54; the stops reviewed each month for Subparagraph 54.k.; and the stops reviewed each month for Subparagraph 54.g. For purposes of calculating compliance, we exclude any stops where the deputies documented on the VSCF that the body-worn cameras malfunctioned during the stop.

For our selection of a sample to review body-worn camera recordings, we used the same sample of 30 cases we selected for the CAD audio request. There was one traffic stop event identified where the deputy did not activate the body-worn camera until he exited his patrol vehicle; however, the traffic stop event involving the contact with the driver was properly recorded. In each of the remaining 29 stops that we reviewed, the deputies properly activated the body-worn cameras during the traffic stop events.

In our sample of body-worn camera recordings reviewed for Subparagraph 54.k., there was one stop where the deputy documented on the VSCF that the body-worn camera malfunctioned and did not record the stop. In that case, portions of the stop were captured by the secondary deputy's body-worn camera. In the remainder of the stops reviewed, the deputies properly activated the body-worn cameras during the traffic stop events.

In our sample of body-worn camera recordings for Subparagraph 54.g., in each of the stops that were reviewed, the deputies properly activated the body-worn cameras during the traffic stop events.

MCSO's compliance rate for this requirement is 100%.

There are still a number of instances in which deputies respond to assist at traffic stops and do not complete the Assisting Deputy and Body-Worn Camera Log. We include this assessment, although it is only a MCSO's policy requirement and not a requirement of this Paragraph, to provide MCSO with the issues that we have identified on this topic. With the issuance of GJ-35 (Body-Worn Cameras), effective on December 31, 2019, the policy is now consistent with EB-2 (Traffic Stop Data Collection), which requires that each deputy assisting on a traffic stop prepare the Assisting Deputy and Body-Worn Camera Log. We had anticipated that the policy clarification, coupled with effective supervisory reviews, would assist deputies to understand when they are required to complete the log. However, we continue to identify instances where the log was not prepared when required. In our review of traffic stops in relation to Paragraphs 25 and 54, we noted that there were 20 assisting deputies who properly prepared the Assisting Deputy and Body-Worn Camera Log, and four assisting deputies that failed to prepare Assisting Deputy and Body-Worn Camera Log. In our review of the traffic stops in relation to Paragraph 54.k., we noted that 81 assisting deputies properly prepared the Assisting Deputy and Body-Worn Camera Log and that 42 assisting deputies did not prepare the Assisting Deputy and Body-Worn Camera Log. In our review of traffic stops in relation to Paragraphs 25.d. and 54.g., we noted that 65 assisting deputies properly prepared the Assisting Deputy and Body-Worn Camera Log and that 19 assisting deputies did not prepare the Assisting Deputy and Body-Worn Camera Log. The rate of deputies complying with MCSO's policy requiring to complete the Assisting Deputy and Body-Worn Camera Log is 72%. We continue to request that MCSO supervisors hold deputies accountable for preparing the Assisting Deputy and Body-Worn Camera Log as required by MCSO policy.

Our reviews of the body-worn camera recordings often reveal instances of deputies exhibiting positive, model behavior; and, at times, instances of deputies making errors, or exhibiting less than model behavior – all of which would be useful for training purposes. We also reviewed the Professional Standards Bureau’s monthly summaries of closed cases for July-September 2022. There continue to be examples of body-worn camera recordings assisting the investigators in making determinations as to whether deputies acted in accordance with MCSO policy, and cases where it was determined that the allegations against the deputies were false. Body-worn cameras recordings have proven to be invaluable in resolving complaints alleging misconduct by deputies.

**Paragraph 63.** *MCSO shall retain traffic stop written data for a minimum of 5 years after it is created, and shall retain in-car camera recordings for a minimum of 3 years unless a case involving the traffic stop remains under investigation by the MCSO or the Monitor, or is the subject of a Notice of Claim, civil litigation or criminal investigation, for a longer period, in which case the MCSO shall maintain such data or recordings for at least one year after the final disposition of the matter, including appeals. MCSO shall develop a formal policy, to be reviewed by the Monitor and the Parties pursuant to the process described in Section IV and subject to the District Court, to govern proper use of the on-person cameras; accountability measures to ensure compliance with the Court’s orders, including mandatory activation of video cameras for traffic stops; review of the camera recordings; responses to public records requests in accordance with the Order and governing law; and privacy protections. The MCSO shall submit such proposed policy for review by the Monitor and Plaintiff’s counsel within 60 days of the Court’s issuance of an order approving the use of on-body cameras as set forth in this stipulation. The MCSO shall submit a request for funding to the Maricopa County Board of Supervisors within 45 days of the approval by the Court or the Monitor of such policy and the equipment and vendor(s) for such on-body cameras.*

### **In Full and Effective Compliance**

MCSO developed and issued a protocol and policy that requires the original hardcopy form of any handwritten documentation of data collected during a traffic stop to be stored at the District level and filed separately for each deputy. When a deputy is transferred, his/her written traffic stop information follows the deputy to his/her new assignment. During our January 2020 site visit, we inspected the traffic stop written data files at District 2 and District 6 to ensure that hardcopies of traffic stop cases are stored for a minimum of five years. We found that the records were in order and properly secured. Because of the COVID-19 pandemic, we were unable to travel to Maricopa County and visit the Districts to confirm that all traffic stop written data is being kept in a locked and secure manner and that only authorized personnel have access to the files. Our inspections will commence once we are able to resume our in-person site visits. MCSO remains in compliance with this requirement.

On June 22, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**d. Review of Traffic Stop Data**

**Paragraph 64.** *Within 180 days of the Effective Date, MCSO shall develop a protocol for periodic analysis of the traffic stop data described above in Paragraphs 54 to 59 (“collected traffic stop data”) and data gathered for any Significant Operation as described in this Order (“collected patrol data”) to look for warning signs or indicia or possible racial profiling or other improper conduct under this Order.*

**Phase 1:** Not in compliance

- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), most recently amended on April 27, 2022.
- EB-2 (Traffic Stop Data Collection), most recently amended on June 15, 2021.
- GJ-33 (Significant Operations), most recently amended on April 6, 2022.
- GH-4 (Bureau of Internal Oversight Audits and Inspections), most recently amended on February 25, 2021.
- GH-5 (Early Identification System), most recently amended on December 16, 2021.
- Traffic Stop Analysis Unit Operations Manual, currently under revision.

**Phase 2:** Not in compliance

MCSO will achieve Phase 1 compliance with this Paragraph when it incorporates its protocols for all of the periodic analyses (monthly, quarterly, annual) of the traffic stop data into the Traffic Stop Analysis Unit Operations Manual. MCSO is currently revising the documents and protocols related to the completion of the pilot for the Traffic Stop Monthly Reports (TSMRs). To achieve Phase 2 compliance with this Paragraph, MCSO must demonstrate ongoing use of the methodologies delineated in the protocols established for Phase 1 compliance for the periodic analyses used to identify possible racial profiling associated with traffic stops.

**Paragraph 65.** *MCSO shall designate a group with the MCSO Implementation Unit, or other MCSO Personnel working under the supervision of a Lieutenant or higher-ranked officer, to analyze the collected data on a monthly, quarterly and annual basis, and report their findings to the Monitor and the Parties. This review group shall analyze the data to look for possible individual-level, unit-level or systemic problems. Review group members shall not review or analyze collected traffic stop data or collected patrol data relating to their own activities.*

**Phase 1:** In compliance

- GH-4 (Bureau of Internal Oversight Audits and Inspections), most recently amended on February 25, 2021.
- GH-5 (Early Identification System), most recently amended on December 16, 2021.

**Phase 2:** Not in compliance

The Traffic Stop Analysis Unit (TSAU) is directly responsible for analyses of traffic stop data on a monthly, quarterly, and annual basis to identify warning signs or indicia or possible racial profiling or other improper conduct as required by Paragraph 64. MCSO must report TSAU's findings from its analyses to the Monitor and the Parties.

Paragraph 65 requires quarterly analyses of traffic stop data. MCSO completed its first quarterly report (TSQR1) on October 22, 2020. MCSO has completed five other quarterly reports since that time. (We discussed the findings of these TSQRs in our previous quarterly status reports.)

MCSO's latest quarterly report, TSQR8, "Disparities Over Time," was published in September 2022. MCSO investigated the disparities between stop length, citations, arrests, and searches over time. The agency analyzed the time period of 2017-2021 in a variety of ways and reported finding some positive changes and some negative changes – implying that sometimes, disparities increase; and sometimes, they decrease; but there is no consistent pattern to these changes.

MCSO also notes that given that the available data covers a time period that begins after MCSO implemented many of the most impactful policy reforms targeting the practices that led to the Court Order, it is not wholly unexpected that significant reductions in disparities are not evidenced in these findings. As a result, MCSO suggests that the measurement of change identified in this report likely underestimates the true impact of MCSO's reform efforts since the Court issued the First Order. We note this caveat to the analyses and recognize that due to the multiple changes in data cleaning and correction adopted after 2017, it is methodologically difficult to extend the analyses to earlier time periods of traffic stop data.

TSQR7 was released on June 30, 2022. The report, "2019-2021 Arrest Activity," investigated in more detail the disparities in arrests between Hispanic and white drivers discovered during the past three TSARs. As expected, MCSO found "consistent disparities between White and Hispanic drivers across all arrest types and years, but they did not present any identifiable pattern. This is indicative that arrest disparities cannot be explained by a single type of arrest or district in the county. The one exception to this was District 5 (Lake Patrol), which had higher arrest rates, for both Hispanic and White drivers, than any other district across the majority of compared categories for each of the three years." From this report, MCSO also proposed a closer examination of special assignments that may yield potential patterns not uncovered in this analysis.

TSQR6 was released on March 31, 2022. The report, "Traffic Stop Quarterly Review: Citations and Warnings," examined in more detail the findings from prior Traffic Stop Annual Reports (TSARs) regarding racial and ethnic differences in traffic stop outcomes. In particular, MCSO sought to explore characteristics of traffic stops that were not included in TSAR analyses – including the impact of total citations emanating from a traffic stop, citation experiences between Latinos and whites for issues unrelated to the reason for the original stop, among others. In general, MCSO reported similar findings to those of prior TSARs in that they continued to find that Latino drivers were more likely to be cited than white drivers. However, they also found that Latino drivers were significantly more likely to be cited for license and registration issues than white drivers, which followed with the finding that Latino drivers had more violations per traffic stop than white drivers across the entire County. MCSO indicated that there are internal training issues that could arise from these findings, as well as opportunities to inform the public

of licensing and registration requirements which leave little discretion to deputies when it comes to enforcement decisions. We discussed this study at length with MCSO, the Plaintiffs, and the Plaintiff-Intervenor; and identified the possibility of exploring some of the findings more thoroughly in future quarterly status reports. Also, during conference calls with the Parties and their respective experts, issues regarding coding and data errors evident in this report were identified; and MCSO agreed to withdraw the original TSQR report and run additional analyses using methodologies agreed to during the calls. The quarterly report was reissued on MCSO's public forum with the changes agreed to during these conference calls.

Paragraph 65 also requires MCSO to conduct monthly analyses of traffic stop data. MCSO's original monthly process to analyze traffic stop data began in 2015, but was suspended in May 2016 because of our determination that the original process lacked statistical validity and required significant refinement to improve the identification of potential alerts in EIS. MCSO resumed monthly analyses of traffic stop data in May 2017 using a new methodology that was statistically based, but generated a substantial number of alerts, many of which did not demonstrate a pattern of potential bias sufficient to warrant the setting of an alert in EIS. Because of this problem, we suspended the process during our July 2017 site visit to allow EIU time to consider possible refinements to the existing methodology.

MCSO's vendor, CNA, proposed a methodology for the monthly analysis of traffic stop data that involved using propensity score weighting to define a deputy's comparison group to look for evidence of individual-level bias. What is known as the Traffic Stop Monthly Report (TSMR) methodology was first proposed in July 2019 to be the basis of the effort to compare the stop outcomes for an individual deputy to his/her peers. Subsequent revisions and refinements of the TSMR methodology have occurred and are documented in our previous quarterly reports. In April 2021, MCSO began the piloting of the TSMR methodology, using 12 months of traffic stop data for the data period that closed in March 2021. Since that time, MCSO has conducted 15 review cycles during the pilot period ending in October 2022. MCSO has run the data and analyzed the results every month, except when agreed to by the Parties and us so that MCSO can make modifications to the methodology based upon experiences from earlier cycles.

The purpose of the TSMR pilot was to test the efficacy of the TSMR methodology, which essentially includes two distinct components. One component is quantitative: It includes sophisticated statistical models designed to identify deputies who are potentially engaging in biased policing. It is important to note that being flagged by the statistical component of the TSMR methodology does not necessarily constitute evidence of potentially biased behavior. There may be logical explanations for flags generated by the statistical models that can only be discovered by an investigation into the data that generated the flags in the first place. This is where the second component of the TSMR pilot methodology enters the process, which we label as the qualitative component of the TSMR methodology. The qualitative component includes an extensive review process by TSAU to determine the validity of the flags and determine the types of interventions that might be recommended for each deputy identified by the TSMR statistical model.

Ongoing concerns with issues relevant to the statistical component of the TSMR methodology was the subject of an October 27, 2021 Court hearing. The Court ordered that MCSO continue to use the approved TSMR methodology, but also instructed MCSO, the Parties, and us to work collaboratively to explore remaining technical issues concerning how information about the time and location of a traffic stop is incorporated into the TSMR methodology. Following the hearing, a group of experts was formed to explore technical options. The group of experts has continued to meet to evaluate possible feasible and practical improvements to the methodology.

In February 2022, for example, several months of discussion led MCSO to introduce a new means of using time and location (splining) of traffic stops to compare deputies' activity more equitably.

MCSO will achieve Phase 2 compliance with this Paragraph when the TSMR process moves from its pilot phase to fully operational, including the finalization of all appropriate guiding documents.

***Paragraph 66.** MCSO shall conduct one agency-wide comprehensive analysis of the data per year, which shall incorporate analytical benchmarks previously reviewed by the Monitor pursuant to the process described in Section IV. The benchmarks may be derived from the EIS or IA-PRO system, subject to Monitor approval. The MCSO may hire or contract with an outside entity to conduct this analysis. The yearly comprehensive analysis shall be made available to the public and at no cost to the Monitor and Plaintiffs.*

**Phase 1:** In compliance

- EB-2 (Traffic Stop Data Collection), most recently amended on June 15, 2021.
- GH-4 (Bureau of Internal Oversight Audits and Inspections), most recently amended on February 25, 2021.
- GH-5 (Early Identification System), most recently amended on December 16, 2021.

**Phase 2:** In compliance

MCSO has completed seven comprehensive annual TSARs analyzing traffic stop data to look for systemic evidence of racial profiling or other bias-based policing. MCSO's first contract vendor, Arizona State University, conducted the first three TSARs. MCSO's current vendor, CNA, conducted the last three TSARs.

MCSO released the first TSAR in May 2016 titled, "Preliminary Yearly Report for the Maricopa County's Sheriff's Office, Years 2014-2015." It found that there are deputies engaged in racially-biased policing when compared to the average behavior of their peers.

MCSO released the second TSAR in March 2017. This evaluation confirmed the first report's main finding that racially biased policing within MCSO appears to be both a deputy- and organizational-level problem.

MCSO released its third TSAR in May 2018, which reported the same results of its two predecessor reports: racially biased policing persists within MCSO at the organizational level.

MCSO released its fourth TSAR in September 2019, employing a new methodology that we approved in April 2019. It reported disparate outcomes by race of driver, but the report never explained what these findings indicated with regard to systemic bias. More specifically, unlike the previous three TSARs that reported the presence of systemic bias within the Patrol Division of MCSO, the Fourth TSAR failed to determine whether the findings of disparate outcomes reflected a systemic problem. We, MCSO, and the Parties all agreed that such a conclusory statement was required. In October 2019, the Sheriff issued a statement that, among other things, said that the disparate outcomes are warning signs of potential racial bias in MCSO's patrol function, which may be indicative of a systemic problem.

In May 2020, MCSO released its fifth report, which reported findings that are consistent with past TSARs. The Fifth TSAR found that there were statistically significant disparities comparing Latinos to whites for all post-stop outcomes, except seizures. It also reported that the disparities were potential indicia of bias as described in the First Order. In a statement subsequent to the release of TSAR5, the Sheriff issued a statement that read, "[TSAR5] [s]hows disparate outcomes in our traffic stops of minorities similar to the outcomes...[and that]...these disparate outcomes are warning signs of potential racial bias in our patrol function."

TSAR6, was released in June 2021. Its main findings are consistent with the previous TSARs. It reports evidence of disparate outcomes by driver race in traffic stops on most stop outcomes. We note that this year's TSAR addressed the issue of systemic bias directly in the report. The Conclusion section of the report (on page 27) said that "while the observed disparities are relatively small...they are very concerning to the MCSO because they identify possible systemic racial bias and its effect on our community. In a June 8, 2021 statement, the Sheriff expressed his concern about possible systemic racial bias in [MCSO's] patrol function and requested that, among other things, that we work with MCSO for an approval of a methodology to look at the disparities in citation rates. We received that methodology shortly before our July 2021 virtual site visit and provided written comments to MCSO in September. That methodology was approved during the fourth quarter of 2021.

TSAR7 was published on June 30, 2022, and, as noted in the Sheriff's statement published in conjunction with the analytic report, the findings of disparities continue to identify possible systemic racial bias the patrol function. The Sheriff notes that some of the disparities are reduced from prior years, but emphasizes that investigating the presence of the continued disparities will remain a priority for TSAU in both quarterly and monthly analytic reports.

Finally, MCSO is proposing changes to the methodology to be employed in TSAR8. Many of these changes result from analytic findings from the Traffic Stop Monthly analyses and others have been the result of Traffic Stop Quarterly investigations. The modifications being discussed show the ability of MCSO to expand and broaden its methodology when new information uncovers potential improvements in the investigation of disparities in traffic stop outcomes.

**Paragraph 67.** *In this context, warning signs or indicia of possible racial profiling or other misconduct include, but are not limited to:*

- a. *racial and ethnic disparities in deputies', units' or the agency's traffic stop patterns, including disparities or increases in stops for minor traffic violations, arrests following a traffic stop, and immigration status inquiries, that cannot be explained by statistical modeling of race neutral factors or characteristics of deputies' duties, or racial or ethnic disparities in traffic stop patterns when compared with data of deputies' peers;*
- b. *evidence of extended traffic stops or increased inquiries/investigations where investigations involve a Latino driver or passengers;*
- c. *a citation rate for traffic stops that is an outlier when compared to data of a Deputy's peers, or a low rate of seizure of contraband or arrests following searches and investigations;*
- d. *indications that deputies, units or the agency is not complying with the data collection requirements of this Order; and*
- e. *other indications of racial or ethnic bias in the exercise of official duties.*

**Phase 1:** In compliance

- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), most recently amended on April 27, 2022.
- EB-2 (Traffic Stop Data Collection), most recently amended on June 15, 2021.
- GH-5 (Early Identification System), most recently amended on December 16, 2021.

**Phase 2:** Not in compliance

MCSO has conducted monthly and annual analyses of traffic stop data and provided documents discussing how the benchmarks required by this Paragraph are used to set alerts for possible cases of racial profiling or other deputy misconduct involving traffic stops. Discussion about the monthly and annual analyses are incorporated into Paragraphs 65 and 66.

We have discussed in our previous quarterly status reports that MCSO has achieved Phase 1 compliance with this Paragraph as a result of its intent to implement the individual benchmarks required by this Paragraph. These benchmarks are highlighted below and are generally referred to as post-stop outcomes in the TSMR and TSAR methodologies.

Paragraph 67.a. identifies three benchmarks pertaining to racial and ethnic disparities. The first benchmark references disparities or increases in stops for minor traffic violations (Benchmark 1). The second benchmark addresses disparities or increases in arrests following traffic stops (Benchmark 2). The third benchmark addresses disparities or increases in immigration status inquiries (Benchmark 3). Since these three benchmarks are incorporated into the EIU Operations Manual and are incorporated as post-stop outcomes in the TSMR methodology being piloted, MCSO is in compliance with Paragraph 67.a.

Paragraph 67.b. identifies a benchmark pertaining to evidence of an extended traffic stop involving Latino drivers or passengers (Benchmark 4). Since this benchmark is now incorporated into the EIU Operations Manual and is incorporated in the TSMR methodology, MCSO is in compliance with Paragraph 67.b.

Paragraph 67.c. identifies three benchmarks. The first benchmark pertains to the rate of citations (Benchmark 5): MCSO is required to identify citation rates for traffic stops that are outliers when compared to a deputy's peers. The second benchmark (Benchmark 6) pertains to seizures of contraband: MCSO is required to identify low rates of seizures of contraband following a search or investigation. The third benchmark in Paragraph 67.c. (Benchmark 7) is similar to Benchmark 6, but it pertains to arrests following a search or investigation. This is also the case for Benchmark 7. Since the three benchmarks are now incorporated into the EIU Operations Manual and are incorporated as post-stop outcomes in the TSMR methodology, MCSO is in compliance with Paragraph 67.c.

Paragraph 67.d. establishes a benchmark pertaining to agency, unit, or deputy noncompliance with the data collection requirements under the First Order (Benchmark 8). This benchmark requires that any cases involving noncompliance with data collection requirements results in an alert in EIS. EIU published an Administrative Broadcast on November 28, 2016 to instruct supervisors how to validate data in TraCS for those cases involving duplicate traffic stop records to deliver timely data validation for our review. MCSO's draft EIS Project Plan 4.0 reported that MCSO began the data validation process for this benchmark on November 28, 2016. Therefore, MCSO is in compliance with Paragraph 67.d.

Paragraph 67.e. allows for other benchmarks to be used beyond those prescribed by Paragraph 67.a.-d. MCSO has three benchmarks under Paragraph 67.e. Benchmark 9 is defined as racial or ethnic disparities in search rates. Benchmark 10 is defined as a racial or ethnic disparity in passenger contact rates. Benchmark 11 is defined for non-minor traffic stops. Benchmarks 9-11 are incorporated into the EIU Operations Manual, as well as the TSMR methodology. Therefore, MCSO is in compliance with Paragraph 67.e.

While MCSO has completed operationalizing the benchmarks required by this Paragraph, we have discussed the problems with MCSO's previous methodologies. (See Paragraph 65.) As noted earlier, the TSMR methodology, which incorporates these benchmarks, was approved for piloting. We anticipate that the pilot will be completed by the next quarterly report, given the progress that has been made to this point. We are currently in the process of finalization of all documents and training required for the full implementation of the TSMR.

During our January 2020 virtual site visit, we committed to holding regular telephonic meetings to continue our collaborative efforts to identify potential problems and solutions identified during the TSMR pilot. These telephonic meetings have continued throughout the pilot process, and we have also incorporated technical meetings of representative experts to discuss more fine-grained statistical or methodological issues. Phase 2 compliance will depend upon the successful completion of the TSMR pilot, as noted above, and the consistent production of TSMR analyses thereafter, including the monthly production of analyses and any closed alert cases stemming from earlier TSMR analyses. MCSO must finalize all of the protocols and processes in the operational manuals, as well as any relevant policies related to the TSMR for the pilot program to be successfully completed.

**Paragraph 68.** *When reviewing collected patrol data, MCSO shall examine at least the following:*

- a. *the justification for the Significant Operation, the process for site selection, and the procedures followed during the planning and implementation of the Significant Operation;*
- b. *the effectiveness of the Significant Operation as measured against the specific operational objectives for the Significant Operation, including a review of crime data before and after the operation;*
- c. *the tactics employed during the Significant Operation and whether they yielded the desired results;*
- d. *the number and rate of stops, Investigatory Detentions and arrests, and the documented reasons supporting those stops, detentions and arrests, overall and broken down by Deputy, geographic area, and the actual or perceived race and/or ethnicity and the surname information captured or provided by the persons stopped, detained or arrested;*
- e. *the resource needs and allocation during the Significant Operation; and*
- f. *any Complaints lodged against MCSO Personnel following a Significant Operation.*

### **In Full and Effective Compliance**

MCSO has not conducted a Significant Operation that met the requirements of the Order since Operation Borderline in December 2014. Subsequent activities (i.e., Operation Gila Monster in October 2016) have not met the criteria for review under this or other Paragraphs.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

As a result of this determination, MCSO District command staff – as well as Investigations and Enforcement Support – will no longer be required to submit monthly statements that they have not participated in Significant Operations as defined by this and other Paragraphs; however, they are required to notify us should staff become involved in a Significant Operation. We will continue to assess Phase 2 compliance through interviews with command and District staff during our regular site visits. During our site visits prior to, and including, January 2020, we routinely

inquired of administrative staff, District personnel, and the Deputy Chiefs of Patrol Bureaus East and West whether any Significant Operations had occurred since the prior site visit. In response, MCSO personnel indicated that no Significant Operations had occurred within their jurisdictional boundaries, nor had any of their staff participated in such operations with other departments. Subsequently, during our remote site visits since April 2020, MCSO administrative personnel have continued to advise us that there were no new Significant Operations conducted by MCSO or any of its personnel.

***Paragraph 69.** In addition to the agency-wide analysis of collected traffic stop and patrol data, MCSO Supervisors shall also conduct a review of the collected data for the Deputies under his or her command on a monthly basis to determine whether there are warning signs or indicia of possible racial profiling, unlawful detentions and arrests, or improper enforcement of Immigration-Related Laws by a Deputy. Each Supervisor will also report his or her conclusions based on such review on a monthly basis to a designated commander in the MCSO Implementation Unit.*

**Phase 1:** In compliance

- EA-3 (Non-Traffic Contact), most recently amended on June 28, 2019.
- GH-5 (Early Identification System), most recently amended on December 16, 2021.

**Phase 2:** In compliance

MCSO has placed into production database interfaces with EIS, inclusive of Incident Reports (IRs), Non-Traffic Contact Forms (NTCFs), Arizona Office of Courts (AOC) records, and the Cornerstone software program (referred to as “the HUB”), that includes training and policy records for MCSO. Supervisors have demonstrated the ability to access these during our site visits. Most audits and inspections of supervisory oversight activities indicate compliance, but several continue to show fluctuating trends of use or completion over time. MCSO has yet to fully develop some inspections that would allow a determination of compliance under this Paragraph. MCSO is currently in the process of finalizing the Traffic Stop Monthly Report (TSMR) following an 18-month pilot process that will provide supervisors the ability to review and respond to data pertinent to the performance of deputies under their command with respect to the requirements of Paragraph 67. MCSO has published eight Traffic Stop Quarterly Reports (TSQRs): the first two for the third and fourth quarters of 2020; and the third through fifth for the first three quarters of 2021. The publication of the sixth TSQR was delayed until the first quarter of 2022 due to the amount of work required and the extended approval processes involved. The seventh TSQR, investigating disparities by ethnicity/race across several arrest types, was published on June 30, 2022. Finally, the eighth TSQR, “Disparities Over Time,” was published in September 2022 and investigated the disparities between stop length, citations, arrests, and searches from 2017 to 2021.

MCSO has automated the dissemination and responses to alert investigations initiated for repetitive deficiencies discovered during audit and inspection processes; however, many of these processes have been placed on hold as MCSO reevaluates the thresholds for the triggering of

alerts. In October 2021, MCSO produced a Threshold Analysis Review Proposal to be conducted annually, as well as an EIS Alert Research/Background document for review. We returned these documents with questions and comments, and requested a presentation of the document and its use. The proposal was approved, and we were provided a demonstration of the Threshold Analysis Review during a conference call on February 16, 2022; but we have yet to receive an updated version of Appendix A of the EIU Operations Manual as a result of that review. We will continue to work with MCSO and the Parties on these issues. AIU developed an inspection that tracks EIS Alert investigations from the time that they are assigned from EIU to District personnel and make their way back through the chain of command for final approval of a disposition. The protocol for this inspection is included in the EIU Operations Manual, Section 302 (EIS Alert Processes), and was approved on March 27, 2019.

During the third quarter, the completion of investigations fell within policy timeframes in 100% of the cases we reviewed. MCSO had requested that this inspection moved from a monthly to a quarterly inspection due to the low number of investigations completed each month. We approved this recommendation prior to the third quarter of 2022. MCSO is currently modifying the inspection to include an evaluation of the effect of any intervention undertaken. We will elaborate on this when the protocol is approved and placed in production. A review of the closed alerts for this quarter shows that most interventions were completed with a meeting between the supervisor and their subordinate; however, we also note that one investigation resulted in a meeting with the commander, and one ended in a reassignment of the deputy.

Since there have been no closures that have not been adequately documented during this quarter, we did not schedule a telephonic site visit conference with MCSO on alert closures. We have requested that MCSO provide an update on the audit of repetitive BIO Action Forms for specific Districts and personnel. MCSO continues to use the insights gained from this initial analysis to refine and develop a repeatable process that is less labor-intensive than the first effort.

In response to a request submitted following our October 2021 remote site visit, MCSO produced a BIO Action Form tracking proposal in December 2021 that was largely based upon a pilot tracking analysis of BIO Action Forms conducted in 2020 based upon 2019 data. We sent our collective comments back to MCSO in January 2022 and await the completion of the first BAF inspection report. According to MCSO's 33<sup>rd</sup> compliance report, the BAF study has been completed and is awaiting publication. With this report, BIO should be able to discover if Districts, or individual supervisors, are experiencing repetitive problems that need to be addressed to ensure compliance with this Paragraph, as well as those covered in Paragraphs 81, 94, and 95.

The Traffic Stop Annual Reports (TSARs) are published and available to the public on MCSO's website. The TSAR7 was placed on the website in June 2022. These reports focus on organizational trends in traffic stop activity and do not allow an examination of potential individual bias in traffic stop outcomes. The methodology employed for the Fourth through Seventh TSARs was also intended to create a foundation for the Traffic Stop Monthly Report (TSMR). MCSO is currently finalizing all aspects related to the monthly traffic stop analysis that would provide information about potential bias of individual deputies when compared with their peers. We, along with the Plaintiff and Plaintiff-Intervenor, have held frequent conference calls addressing a variety of outstanding issues related to the TSMR. MCSO began the pilot TSMR

process in April 2021 using March traffic data and has repeated this process of analyses through 15 cycles of data, with some modifications being explored and discussed through the second quarter of 2022. MCSO has initiated a detailed vetting process as a result of these analyses. The vetting of cases that flag as outliers leads MCSO to recommend that some cases are discounted, while others result in memos to District staff, and still others receive intermediate or full interventions depending on the findings of TSAU staff. During the pilot process, we and the Parties are given time to review and comment on these decisions before they are finalized.

As noted above, MCSO has produced eight Traffic Stop Quarterly Reports. The insights from several of these investigations have resulted in findings that will influence future analyses.

In TSQR8, “Disparities Over Time,” MCSO investigated the disparities between stop length, citations, arrests, and searches over time, from 2017 to 2021. MCSO set up the data in a variety of ways to investigate the potential changes in findings over time. MCSO found both positive and negative trends, concluding that “The results of the analyses performed do not demonstrate a clear pattern of disparities consistently increasing or decreasing over time.” MCSO conjectured that the lack of any clear pattern may be due to the fact that many of the modifications to policy, practice, and record-keeping had occurred prior to 2017 and may not show up in the analyses conducted. The changes to data handling, specification, and verification occurring after 2017 makes it nearly impossible to compare the current data with that which precedes 2017.

In TSQR7, “Traffic Stop Quarterly Report: 2019-2021 Arrests Activity,” MCSO investigated in more detail the disparities in arrests between Latino and white drivers discovered during the past three TSARs. As expected, MCSO found “consistent disparities between White and Hispanic drivers across all arrest types and years, but they did not present any identifiable pattern. This is indicative that arrest disparities cannot be explained by a single type of arrest or district in the County. The one exception to this was District 5 (Lake Patrol), which had higher arrest rates, for both Hispanic and White drivers, than any other district across the majority of compared categories for each of the three years.” From this report, MCSO has also proposed a closer examination of special assignments that may yield potential patterns not uncovered in this analysis.

In TSQR6, “Traffic Stop Quarterly Review: Citations and Warnings,” MCSO examined in more detail the findings from prior Traffic Stop Annual Reports (TSARs) regarding racial and ethnic differences in traffic stop outcomes. In particular, MCSO sought to explore characteristics of traffic stops that were not included in TSAR analyses – including the impact of total citations emanating from a traffic stop, citation experiences between Latinos and whites for issues unrelated to the reason for the original stop, among others. In general, MCSO reported similar findings to those of prior TSARs in that they continued to find that Latino drivers were more likely to be cited than white drivers. However, MCSO also found that Latino drivers were significantly more likely to be cited for license and registration issues than white drivers, which followed with the finding that Latino drivers had more violations per traffic stop than white drivers across the entire County.

In response to these findings, MCSO indicated that there may be opportunities to develop further training for deputies, and also to inform the public of licensing and registration requirements that leave little discretion to deputies when it comes to enforcement decisions. We discussed this study at length with MCSO, the Plaintiffs, and the Plaintiff-Intervenor, including the possibility of exploring some of the findings more thoroughly in our future quarterly status reports. The original TSQR6 report had been removed from MCSO's website following the discovery of coding errors in the data. This resulted in new analyses and MCSO has posted the corrected version on its public website.

In TSQR5, MCSO investigated in more depth the organization-wide disparities in traffic stop outcomes and found that a few Districts accounted for certain aspects of these disparities. From a policy perspective, this quarterly report offers insight into planned activities by TSAU to work with each District to mitigate potential systemic bias. During our April site visit, MCSO reported that it held meetings at each District to share the findings from this quarterly report with command staff and personnel. MCSO noted that several meetings took longer, and entailed more presentations and documentation, depending upon the specific findings for those particular Districts.

MCSO continues to provide us access each month to all Non-Traffic Contact Forms (NTCFs) involving investigative stops and field information; however, MCSO has only begun planning to conduct more thorough statistical analyses of these for this and other Paragraphs. At times over the past year our review of the NTCFs provided each month indicated that a higher proportion of Latinos are being contacted in particular areas of the County for relatively minor infractions. Our review of NTCFs for this quarter did not raise particular concern about disparate treatment. Several months ago, MCSO proposed an initial study of how this form (NTCF) and the related policy are being used across the agency. While this proposed analysis does not investigate potential indications of bias in how these stops are conducted by deputies or evaluated by supervisors, it will give some insight into the modifications needed in both the form and policy going forward. We, MCSO, and the Parties held a conference call in early February 2022 to reiterate the importance of understanding how NTCFs are used by deputies; and MCSO has committed to move forward with the first stage of the proposed study. In MCSO's 33<sup>rd</sup> quarterly compliance report, the agency indicated that the NTCF study is underway. We will evaluate the findings of this report once it is produced.

We continue to evaluate supervisory investigations into non-traffic stop alerts each month by selecting a random sample of 15 cases, when the number of completed investigations exceeds that amount. Over the past year, we have found that most supervisors are completing these investigations in a timely fashion and addressing the deficiencies raised as we have noted above. MCSO has proposed, and we have agreed in principle, to convert the alert inspection to a quarterly process that includes an evaluation of the effectiveness of the interventions undertaken. Once placed into production, we will examine the additional information gained from the modifications being proposed.

MCSO has created an EIS Alert Review Group (ARG) that evaluates the investigations of supervisors prior to closing an alert. The ARG ensures that the reports of the supervisors address all aspects of the assigned investigations and returns those that are deficient to the District for

continued revision. Over the past several months, we have noted that the proportion of completed alert investigations being sent back to the Districts by the ARG has fallen below one-third of all cases we evaluate. MCSO has emphasized supervisory investigations in the past years' training, as well as the creation of liaisons between BIO and the Districts to ensure that supervisors receive the necessary support and information to complete these investigations.

In addition, EIU has developed online supervisory resource material for alert investigations that was placed on the HUB in January 2020. MCSO has not yet developed a method of evaluating whether and how the interventions triggered by these alert investigations may, or may not, be mitigating the problems to begin with; however, as noted above, the examination of effectiveness is part of the modification from a monthly to quarterly process now proceeding through the approval process.

The Audit and Inspections Unit (AIU) conducts monthly audits of supervisory oversight via the Supervisor Notes made for each deputy. Minimally, each month, supervisors should be making a performance appraisal note, reviewing two body-worn camera recordings, and reviewing the EIS profile of their subordinates. During the third quarter, MCSO reported compliance rates ranging between 99.39% to 100%. MCSO computes its compliance rates based upon a matrix of items; they are based upon randomized samples that we draw. Our computation of compliance is slightly lower than that reported by MCSO, as we judge an entire case reviewed as noncompliant if any of the key components making up the inspection are late or missing at the time of the inspection. Our computed compliance rate for August was 97.8%, while we concur with the 100% compliance rate reported for July and September.

AIU also conducts three inspections of traffic stop information: two of these pertain to the timely review and discussion of traffic stops by supervisors for each subordinate; and the third is an inspection regarding the correct completion of traffic forms and the coordination of these forms with databases such as CAD and the review of body-worn camera footage. For the traffic review and traffic discussion inspections, MCSO reported compliance rates ranging from 98% to 100% for July through September. The deficiencies that did exist were minor deviations from the matrices used by MCSO to evaluate compliance. Our evaluation of the discussion inspections concurs with the findings reported by MCSO; however, our compliance calculations for this period regarding supervisor review of traffic stops were slightly lower due to the fact that we do not employ a matrix to assess compliance, but rather judge individual cases as deficient if any significant information is determined not to be consistent across traffic stop forms or CAD. For this quarter our compliance rate for July was 93% and for August 91.3%. We concur with the September compliance rate of 100% reported by MCSO. For the traffic data inspection, MCSO reported compliance rates exceeding 98% for July through September. Our compliance rates were 86%, 91.5% and 85.8% respectively. The lapses found for the data inspections were due to incongruent information on the VSCF and CAD for location, reasons for the stop and passenger contact, among others. Each of the three inspections was based upon a stratified random sample of all traffic stops drawn by the Monitor and provided to MCSO. AIU sent BIO Action Forms to those Districts where it found deficiencies.

MCSO has developed an Incident Report Inspection that has been approved following several revisions. The inspection should include instances where prosecuting authorities turned cases down due to a lack of probable cause, among other matrix items developed by MCSO. MCSO reported compliance rates for July through September exceeding 99<sup>th</sup> percentiles, with no instance of a case being turned down due to a lack of probable cause. We concur with these findings. For those deficiencies discovered during the inspection process, AIU sent BIO Action Forms to the appropriate Districts for additional review and action. Most importantly, the inspectors noted that there was no indication that the immediate supervisors found these deficiencies within their own review of these IRs.

MCSO is also developing an inspection of repetitive BAFs so that they might intervene for supervisors who evidence recurring problems. We have found that measures such as the creation of the Alert Review Group have greatly enhanced the accountability of Districts and individual supervisors in the completion of their roles.

**Paragraph 70.** *If any one of the foregoing reviews and analyses of the traffic stop data indicates that a particular Deputy or unit may be engaging in racial profiling, unlawful searches or seizures, or unlawful immigration enforcement, or that there may be systemic problems regarding any of the foregoing, MCSO shall take reasonable steps to investigate and closely monitor the situation. Interventions may include but are not limited to counseling, Training, Supervisor ride-alongs, ordering changes in practice or procedure, changing duty assignments, Discipline, or of other supervised, monitored, and documented action plans and strategies designed to modify activity. If the MCSO or the Monitor concludes that systemic problems of racial profiling, unlawful searches or seizures, or unlawful immigration enforcement exist, the MCSO shall take appropriate steps at the agency level, in addition to initiating corrective and/or disciplinary measures against the appropriate Supervisor(s) or Command Staff. All interventions shall be documented in writing.*

**Phase 1:** In compliance

- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), most recently amended on April 27, 2022.
- EB-2 (Traffic Stop Data Collection), most recently amended on June 15, 2021.
- GH-5 (Early Identification System), most recently amended on December 16, 2021.

**Phase 2:** Not in compliance

MCSO is finalizing policies, protocol and training related plans for the Traffic Stop Monthly Reports (TSMRs). The TSMR is intended to provide a timelier response to potential indications of bias at the deputy level through the examination of a rolling 12-months of traffic stop data for each deputy. We, the Parties, and MCSO have conducted frequent conference calls over the last 18 months to ensure that the methodologies adopted will be effective in replacing the intervention processes emanating from prior Traffic Stop Annual Reports (TSARs). MCSO initiated a pilot program to evaluate and assist in the refinement of each aspect related to the TSMR in April 2021. MCSO has conducted 15 monthly cycles of traffic stop data and identified deputies deemed

outliers in comparison to their peers. MCSO has refined the vetting process for those cases where a deputy flags in the analysis and has recommended outcomes ranging from the discounting of a flag to the onset of full interventions, which would entail remedies based upon the findings of TSAU. Following completion of the pilot, MCSO will also be producing the monthly analyses for ongoing review, as well as documentation of any cases that are closed as a result of the completion of TSMR processes.

MCSO continues to develop the EIU Operations Manual. The sections of the manual that remain under development are those related to statistical methodologies for the TSMR and the thresholds that may trigger alert inquiries for all alert investigations. MCSO has recently produced a proposal for the modification of thresholds as well as an annual plan to evaluate the thresholds once they are put into production. We have provided comments on these proposals, as well as a demonstration of the processes proposed and will work with MCSO in the refinement of these. MCSO has received approval to move forward on several TSQR projects and published eight of these reports through the third quarter of 2022.

MCSO published the Seventh Traffic Stop Annual Report in June 2022 and continues to find in the examination of traffic stop outcomes disparities “that may indicate a systemic bias within the patrol function” that needs to be ameliorated. In TSQR5, MCSO further investigated these disparities and found that particular Districts were associated with certain traffic stop outcome disparities. Subsequently, BIO reported that they held command staff and personnel meetings in each District outlining the particular disparities found for each District. This information was relayed to us and the Parties during our April site visit meeting. Overall, the analytic methods used in the TSARs are not able to identify individual deputy activity; but form the basis for organizational strategies to address systemic biases through training and policy; the actions taken following the publication of TSQR5 were encouraging.

A portion of the monthly alert report produced by EIU depends upon the TSMR. The EIS also produces alerts for numerous activities, ranging from repetitive data entry errors to internal and external complaints. Many of these ongoing alerts are dependent upon the revision of alert thresholds which we noted above continue to undergo evaluation by MCSO. While we acknowledge that the revision of these thresholds entails time consuming research and surveys of line personnel, we believe the delay of nearly two years has hampered the effective use of the EIS to track repetitive behavior that may be deleterious to the organization and the community it serves. BIO personnel continue to evaluate and update the thresholds used to trigger these alerts to ensure that they are sufficient to detect behaviors that might indicate bias on the part of deputies, taking into consideration the current assignment of the deputies as noted in Paragraph 81.f. In the meantime, the non-TSMR alerts triggered under the current system are first evaluated by EIU personnel and then transmitted, via BlueTeam, to the appropriate supervisor and District command. The supervisors conduct investigations, including a potential discussion with the designated deputy, and memorialize their actions in BlueTeam. District command staff and an Alert Review Group (ARG), comprised of multiple BIO personnel, review these investigations to ensure that proper investigations are carried out and possible interventions are clearly outlined.

AIU began producing an inspection of EIS Alert Processes in April 2019 that evaluates the timeliness of alert investigation completion and whether discussions, training, or Action Plans might result from the supervisory investigation. The inspection is lagged by one month to allow supervisors 30 days to complete the investigation. Subsequently, we have moved to a quarterly EIS Alert Process inspection, as MCSO noted that due to the low number of investigations conducted in any single month, the compliance ratings can be dramatically affected by single cases. The compliance rate reported by MCSO for the third quarter was 100%. We concur with this finding. The interventions implemented for this quarter include one reassignment, one meeting with a commander, and over a dozen meetings with a supervisor. The Training Division, working in concert with EIU, included in the 2019 SRELE training a refresher course on supervisory responsibilities in conducting alert investigations. This training was delivered during the fall of 2019. Following our January 2020 site visit, MCSO also placed on the HUB resource materials for supervisors who may not have conducted alert investigations recently. This material provides supervisors with examples of how to complete the alert investigation paperwork or contact EIU staff should the need arise.

MCSO's Plan to Promote Constitutional Policing (also referred to as the Constitutional Policing Plan, or CPP) was drafted to address systemic issues identified in the Traffic Stop Annual Reports (TSARs). The CPP includes nine Goals and a timeline for the completion of the Goals. Our comments in this report pertain to compliance with the Plan during the third quarter of 2022. MCSO created an online progress tracking tool (Smartsheet) and provided a link to the application in April 2020. The online spreadsheet is based on the plan originally agreed to by the Parties and approved by the Court. The spreadsheet provides additional details of MCSO's reported progress on each of the nine CPP Goals: the start date; the projected completion date; and the status of sub-Goals and projects.

We determine compliance with the CPP through several means. First, we issue monthly and quarterly document requests pertaining to specific Goals of the CPP, which we review. We have monthly document requests pertaining to projects under Goals 1, 3, 4, and 5. We review meeting agendas and discussion items to verify compliance with the projects noted under those Goals. For the training components of these Goals, MCSO submits training materials that must be reviewed and approved for before delivery. We confirm completion of training requirements through HUB reports and reviews of BIO inspections of supervisor notes documenting briefings. Our standing requests for other Paragraphs of the First and Second Orders also provide information related to some of the CPP Goals. For Goal 1, we review MCSO monthly submissions related to supervisory corrective actions. For Goal 2, we review a selected sample of deputy and supervisor Employee Performance Appraisals (EPAs). For Goal 6, we conduct periodic meetings with MCSO, the Plaintiffs, and Plaintiff-Intervenor related to the evaluation of traffic stop data and associated monthly, quarterly, and annual reports. For Goal 9, we request statistical information, and compare these statistics to the previous quarter to determine if MCSO is making progress. We review the progress reported for all Goals and projects in the online spreadsheet and record our findings. We corroborate MCSO's reported progress during our site visits, where we confirm the reported outcomes and ask clarifying questions on projects completed. Our comments below reflect what we learned as a result of our reviews of documentation during the third quarter of 2022, and pursuant to our inquiries during our October 2022 remote site visit.

Goal 1: Implementing an effective Early Intervention System (EIS) with supervisor discussions. For the third quarter of 2022, MCSO continued to report an overall 96% completion rate for Goal 1, the same completion rate reported in the first and second quarters of 2022. The sub-goal noted as the supervisory discussion process had a starting date of April 3, 2018, with the projected completion date listed as December 31, 2021. As of our October 2022 review, the completion rate for this sub-goal increased from 92% to 93%. The Traffic Stop Monthly Report (TSMR) continues to show an 80% completion rate; this completion rate has remained at 80% since the third quarter of 2021. During our October virtual site visit, MCSO reported that it conducted several Town Halls in the latter part of July. These Town Halls – which primarily covered traffic stop analysis – were conducted in Districts 2, 3, 4, 5, and 7, as well as Enforcement Support and Lower Buckeye Jail. MCSO stated that Town Halls for the calendar year were completed. MCSO also stated that if there is a specific need identified, additional Town Halls may be conducted in the fourth quarter.

Goal 2: Evaluating supervisors' performances through an effective Employee Performance Appraisal process. For the second quarter, Goal 2 noted a completion rate of 87%, or an 8% increase from our last review. On the online spreadsheet, the completion date for this Goal was previously revised and continues to show a date of May 31, 2023. MCSO advised us that training had started for sworn supervisors on the Perform application. As of our October site visit, 75 supervisors had been trained. As soon as all supervisors are trained on the new application, the new EPA forms will be implemented. The integration between Perform and BlueTeam continues; the system configuration was reported at 95% complete. We restated the concerns with deficient areas in current EPAs. We reminded MCSO of the need to ensure that supervisors who conduct deficient misconduct investigations, and commanders who approve deficient investigations, are being held accountable for these deficiencies in their respective EPAs. The other concern we identified was that many of the supervisor EPAs are not meeting the requirements of Paragraphs 92 and 95.

Goal 3: Delivering enhanced implicit bias training. Goal 3 was noted as 93% completed on the tracking spreadsheet, for the third quarter of 2022. MCSO reported that the Gila Bend training materials had been completed and sent for review and approval. MCSO reported that the Captains' meeting, where bias topics were to be discussed, had been previously scheduled for August. This meeting was moved to September. The topic of cultural competency will be discussed during the November Captains' Meeting.

Goal 4: Enhanced Fair and Impartial Decision-Making training (FIDM). Goal 4 was noted as 93% completed on the tracking spreadsheet, for the third quarter of 2022. In our July virtual site visit, MCSO noted that FIDM training was ongoing, and was approximately 75% completed. During our October virtual site visit MCSO reported that FIDM training, which was conducted at the Annual Combined Training (ACT), was 98.29% completed. MCSO scheduled a make-up class on October 31 for employees who had missed the initial ACT training.

Goal 5: Delivering enhanced training on cultural competency and community perspectives on policing. The completion rate for Goal 5 was noted at 97%, for the third quarter of 2022. The subject matter for Goals 3 and 5 was combined into the Gila Bend training materials. During our October virtual site visit, we inquired about the Traffic Stop Survey. MCSO stated that they had

received a total of 41 surveys from approximately 26,000 traffic stops. MCSO reported that the response rate had increased from .07% to .15%. The QR code previously reported under consideration was implemented, and a video to increase participation was added on social media. Subsequent to our October site visit, we requested copies of the Traffic Stop Surveys completed in the third quarter. MCSO provided a spreadsheet with 12 surveys. Nine of the drivers identified as white, and three drivers identified as Hispanic. Five drivers were male, and seven drivers were female. As to the question whether drivers believed they were treated without bias, eight agreed, one disagreed, and one had no opinion. Of the three Hispanic drivers, on the question of unbiased treatment, two had neutral responses and the third agreed they were treated without bias.

Goal 6: Improving traffic stop data collection and analysis. As of our October review, Goal 6 was noted as 98% completed, the same as in our July review. Over the past two years, we have held 70 TSMR conference calls. Eight of them involved the Parties' various experts and focused on alternatives or modifications to the original methodology. We believe these calls have been productive and resulted in several changes to the methodology, including issues related to how the time and location of stops are specified in the methodology, as well as more general concerns about data quality and preparation. The TSMR methodology has undergone 15 pilot cycles, which resulted in closer examination of traffic stops for those deputies whose traffic stops appear outside the norm when compared to the traffic stops of their peers. From this statistical examination, MCSO has conducted more in-depth analyses of the traffic stops for those deputies who have the highest, or multiple, disparities for traffic stop outcomes. MCSO's statistical and in-depth analysis has been regularly shared with us, the Plaintiff-Intervenor, and Plaintiffs, and has resulted in several interventions. During our July 2022 virtual site visit, we established a target date of October 1, 2022 for the completion of the TSMR pilot. The final revision of documents is expected to be completed shortly, along with the training protocols commensurate with the TSMR. MCSO will continue to share monthly data analyses for the TSMR, as well as all closing documents for any cases that proceed to intermediate or full interventions, or result in a memo to District Command. We note that TSMR guidance documents and training documentation were completed and approved during the third quarter. However, MCSO must publish these documents for the pilot to be fully complete.

Goal 7: Encouraging and commending employees' performance and service to the community. This goal has been completed. This goal was not part of the requirements set by the First Order.

Goal 8: Studying the Peer Intervention Program. This goal has been completed. This goal was not part of the requirements set by the First Order.

Goal 9: Building a workforce that provides Constitutional and community-oriented policing and reflects the community we serve. MCSO's goal is to establish a hiring process that will build a workforce that provides Constitutional policing and reflects the community it serves. As of our October 2022 review, Goal 9 was listed as having a 77% completion rate, the same as in our July review. The expected completion date on this goal has been revised several times from the initial date of December 31, 2020, to the current date of September 30, 2022.

During our October virtual site visit, MCSO reported that since the July site visit, they had transitioned to a new recruiting system. MCSO will be working with a virtual job fair vendor on several events during the year. A new text messaging system that keeps applicants up to date on

the hiring process has been approved, and MCSO is currently working with their Information Technology group to have the application implemented. The system will keep applicants informed about their appointment dates for the different phases of the hiring process. MCSO reported that they were able to increase the starting salary for Detention Officers. In addition, current Detention Officers will receive salary increases. MCSO reported that they are considering an alternative to the polygraph examination used in the hiring process. The alternative tool is known as EyeDetect. This instrument measures changes in cognitive load, which has an impact on the eyes and reading behavior; it essentially measures slight changes in eye movement to detect deception. The process used for EyeDetect can be reportedly completed in 30-45 minutes, whereas a polygraph may take three to four hours. MCSO is currently conducting research on the effectiveness of EyeDetect with other agencies using this instrument. EyeDetect will not be used for deputy sheriff applicants, since Arizona Peace Officers Standards and Training (POST) rules require polygraphs for sworn members. We inquired about MCSO's proposal, as reported in our July virtual site visit, to send recruitment emails to individuals holding security guard licenses. MCSO reported that they had been holding off on sending recruitment emails until the pay raise for new Detention Officers was approved. This way, they could use the increase as a recruiting incentive in their emails. MCSO reported that there will be a 2.5% market adjustment for all current Detention Officers. We inquired if any additional steps were being considered to improve retention. MCSO stated that they held engagement groups to develop recommendations. One of the suggestions coming from employees was that they would like more opportunities to share thoughts and ideas, and improved communication.

MCSO reported that 55 new employees were hired in the third quarter. Of these new employees, two were sworn, 15 were Detention, and 38 were civilian. At the time of our October site visit, there were two sworn Academy classes in session. One class was scheduled to graduate eight trainees in December. The demographics of this class were 62.5% white, 25% Hispanic, and 12.5% not specified. The other sworn class will graduate nine trainees in March 2023. The demographics in this class were 44.4% white, 11.1% Hispanic, 22.2% Asian, and 22.2% Black. At the time of our October site visit, MCSO had one Detention class in the Academy, which was scheduled to graduate in December. The demographics in this class were 16.6% white, 50% Hispanic, 8.3% American Indian or Alaskan Native, 8.3% Asian, 8.3% Black, and 8.5% two or more races. MCSO also had another Detention class in the hiring process, with five trainees hired as of our October virtual site visit.

As for current employees, there was a total of 177 sworn supervisors reported. Supervisor demographics for sworn were reported as 77.97% white, 17.51% Latino, 2.8.% Black, 1.13% Asian, .56% two or more races, and .03% not specified. There was a total of 257 Detention supervisors reported. Supervisor demographics for Detention were reported as 67.32% white, 24.12% Latino, 4.28% Black, 2.72% Asian, 0.39% Native Hawaiian or Pacific Islander, 0.39% American Indian/Alaskan Native, and 0.78% two or more races. There was a total of 132 civilian supervisors reported. Supervisor demographics for civilian employees were reported as 63.64% white, 18.18% Latino, 11.36% Black, 0.76% American Indian or Alaskan Native, 1.52% Asian, 3.03% two or more races, and 1.51% not specified.

During our October virtual site visit, MCSO reported 938 vacancies, as of September 30, 2022. MCSO previously reported 903 vacancies in the second quarter, and 838 vacancies in the first quarter. The vacancies reported for the third quarter were 106 sworn, 601 Detention, and 231 civilian. MCSO reported an overall attrition rate of 23.89%. There was a total of 62 voluntary separations in the third quarter; these were reported as five sworn, 36 Detention, and 21 civilians.

MCSO continues to show a declining trend in personnel resources. As noted in previous quarterly status reports, personnel numbers in Custody Services continues to be a concern. For the third quarter, MCSO reported 601 Detention vacancies. For the second quarter, MCSO reported 569 Detention vacancies. For the first quarter, MCSO reported 524 Detention vacancies. MCSO has increased the starting salary for Detention Officers and also increased salaries for existing Detention personnel. These steps may take time to yield results. Even if a significant number of Detention Officers are hired before the end of the year, it will take several weeks to train these new officers to the point where they can be effectively utilized.

With regard to training on implicit bias topics, MCSO appears on track to fulfill training commitments for the year. MCSO continues to work to address the quality of data analysis and supervisor interventions, as noted in our comments in Goal 6.

***Paragraph 71.** In addition to the underlying collected data, the Monitor and Plaintiffs' representatives shall have access to the results of all Supervisor and agency level reviews of the traffic stop and patrol data.*

### **In Full and Effective Compliance**

MCSO has provided us with access to existing data from monthly and annual reports.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

While we continue to work with both MCSO and the Parties on specific issues of methodology for Non-Traffic Contact Forms and the Annual, Monthly, and Quarterly Reports for traffic stop data, we have nonetheless been afforded complete access to all requests involving data. Recently, MCSO discovered during tests of the TSMR methodology that over 500 traffic stops from April 2020-March 2021 had been assigned incorrect coordinates for the locations of the stops. This typically occurs as a result of communication problems or other technical issues involving the transmission of data that may arise during a traffic stop. Traditionally, these incorrect locations are corrected by dispatch staff at the end of each shift; however, during this time period, the corrections were missed. Upon making the discovery, MCSO notified us and the Parties and began manually correcting these locations to use the data fully. Furthermore, as a result of a closer examination of stops that occur during special assignments, in preparing a quarterly report proposal, MCSO found that there was an undercounting of special assignment stops included in both Annual and Monthly analyses. MCSO's proposal includes an evaluation of the impact this may have had on conclusions developed for these reports. We will discuss this in more detail once approved and completed. However, MCSO has been forthcoming when they recognize any

deficiencies. MCSO is modifying its data quality procedures to catch and correct these issues in a timely fashion. These location corrections were also made for the data used in the Sixth and Seventh Traffic Stop Annual Reports, and the undercounting of special assignment stops will be evaluated as described. TSAU continues to monitor stop locations and correct the default locations as they arise. We will review additional data quality procedures as they are made available to us.

## Section 8: Early Identification System (EIS)

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### COURT ORDER IX. EARLY IDENTIFICATION SYSTEM (“EIS”)

#### *a. Development and Implementation of the EIS*

*Paragraph 72.* MCSO shall work with the Monitor, with input from the Parties, to develop, implement and maintain a computerized EIS to support the effective supervision and management of MCSO Deputies and employees, including the identification of and response to potentially problematic behaviors, including racial profiling, unlawful detentions and arrests, and improper enforcement of Immigration-Related Laws within one year of the Effective Date. MCSO will regularly use EIS data to promote lawful, ethical and professional police practices; and to evaluate the performance of MCSO Patrol Operations Employees across all ranks, units and shifts.

#### **Phase 1:** In compliance

- EA-3 (Non-Traffic Contact), most recently amended on June 28, 2019.
- GH-5 (Early Identification System), most recently reviewed on December 16, 2021.

#### **Phase 2:** Not in compliance

As a result of interfaces for remote databases introduced in 2017, the Early Intervention System (EIS) now includes Incident Reports (IRs), Non-Traffic Contact Forms (NTCFs), records from the Administrative Office of the Courts (AOC), and training completion and policy acknowledgement records from the Cornerstone software (the HUB). MCSO continues to work on the EIU Operations Manual to memorialize the collection, analysis, and dissemination of relevant data; as well as the responsibilities and roles of agency and EIU personnel. MCSO has completed approximately 90% of the manual to date. Those sections that are under development pertain to the publication of documents and protocols approved as a result of the Traffic Stop Monthly Report (TSMR), as well as the sections that pertain to the definitions, incident procedures, and a revision of the EIS Alert Processes (302). MCSO has produced a proposal to modify the thresholds and review them annually. We approved the proposal, and MCSO provided a demonstration of the threshold review process during a conference call on February 16, 2022; but we have not received an update to Appendix A of the EIU Operations Manual that reflects those potential changes as a result of the review. MCSO also proposed modifying the EIS Alert inspection from a monthly to a quarterly report that also will include an evaluation of the effectiveness of interventions undertaken. We have approved the modification to a quarterly report and await a clear protocol regarding the evaluation of the effect of interventions.

To capture the activities of deputies in non-traffic stops of individuals, MCSO created Non-Traffic Contact Forms (NTCFs), which were interfaced with EIS in mid-2017. MCSO has provided us with access to investigative stops that make up a portion of NTCFs since their inception. Over the past two years, we have suggested that MCSO create a methodology to statistically examine these civilian contacts to ensure that there is no evidence of bias in the way they are conducted. MCSO has produced a preliminary draft of an NTCF inspection methodology

that we have returned with comments. In addition, we had requested and received several months of data for all contacts captured using NTCFs in 2019; and we found that the distinction between Field Information and Investigative Stop is not clear to deputies using the forms. MCSO has now proposed to conduct a study of NTCF use by deputies, using the preliminary methodology mentioned previously, to evaluate whether the form, policy, and training associated with stops documented on NTCFs needs to be modified. In a recent request for information, the BIO Captain stated that once the methodology for this one-time study is approved, BIO personnel will complete the assessment in approximately 60-75 days. Until the study and analytic proposals are complete, we will continue to review both investigative stops and field interviews collected on the existing forms. MCSO supplies us with a list of these non-traffic stops each month. A conference call between us, MCSO, and the Parties in early February 2022 resulted in the approval of MCSO's initial evaluation of NTCF use. In MCSO's 33<sup>rd</sup> quarterly compliance report, the agency notes that the NTCF study is underway; and MCSO is developing matrices and reviewing potential policy modifications.

We will continue to work with MCSO to finalize each of these data analytic methods. MCSO continues to regularly publish a number of reports on deputy activity and supervisory oversight that are not tied to the methodologies of the TSMR, TSQR, or TSAR.

The Audits and Inspections Unit (AIU) produces a monthly report evaluating Supervisor Notes based upon a random sample we draw that indicates whether the selected supervisors are reviewing the EIS data of deputies under their command. The inspection looks for indications that supervisors made entries for each person they supervise with regard to two randomly selected BWC videos, provide one EPA note, make two supervisor entries, and indicate that the supervisor has reviewed their deputies' EIS status. The compliance rates reported by MCSO are based on a matrix developed for this inspection. For this quarter, the compliance rates reported by MCSO were 99% or higher each month. Our calculation, in contrast, counts individual cases as out of compliance for any missed policy timeframes or requirements. For August, we calculated a compliance rate of 97.8% due to two missing EIS checks by supervisors. We concur with the 100% compliance reports for July and September. AIU continues to send BIO Action Forms to the Districts with deficiencies, and we have always had the opportunity to review these forms when requested.

In the Traffic Stop Review Inspection for this quarter, MCSO reports compliance rates at 98% or above. Our calculations for July and August differ due to two reviews each month that were conducted past policy guidelines; the compliance rates we calculated are 93% and 91.3% respectively. We concur with the 100% rate for September. The compliance rates for the Traffic Stop Discussion Inspections were above 98% for this quarter. We concur with these findings. The third traffic-related audit is the Traffic Stop Data Inspection, in which AIU uses a matrix comparing traffic stop information found on Vehicle Stop Contact Forms (VSCFs) with Computer Aided Dispatch (CAD) and body-worn camera (BWC) footage. The compliance rates reported by MCSO during this quarter were all in excess of 98%. We compute compliance based upon specific policy requirements and rule as noncompliant any case that has missing or incorrect information. Therefore, our rate of compliance was 86% for July, 91.5% for August, and 85.8% for September.

All of the inspections for traffic stops are based upon stratified random samples that we draw on a monthly basis. The deficiencies noted by the inspectors resulted in BIO Action Forms being sent to the appropriate Districts for this quarter.

While we can look for trends in deficiencies over each quarter, we have suggested to MCSO that AIU conduct an evaluation of all BIO Action Forms sent to Districts to ensure that there are not long-term trends by Districts or supervisors that cannot be distinguished while looking at shorter timeframes. MCSO conducted a preliminary analysis of BIO Action Forms from January to May 2019 and reported these findings during our July 2019 site visit. MCSO found that there was indeed a small number of deputies who had received several BIO Action Forms. MCSO produced a methodology in June 2020, which we and the Parties returned with comments. MCSO refined the methodology and resubmitted it in December 2020. The proposed methodology has been returned to MCSO with a few issues remaining and continues to be in the process of review or revision. According to MCSO's 33<sup>rd</sup> quarterly compliance report, the new BAF study has been completed and is awaiting approval for publication.

EIU also produces a monthly report on non-traffic alerts triggered within EIS. From March to May 2020, we noted a dramatic increase in Notice of Claim Alerts. In response to questions we submitted regarding this issue, BIO command staff advised that they had recently discovered that there was a backlog of emails from the Legal Liaison Section regarding Notices of Claims. During our October 2020 remote site visit, the EIU lieutenant advised that the backlog had been eliminated; and that MCSO had implemented new internal practices to ensure that such an oversight would not reoccur. MCSO will be updating the EIS Operations Manual in accordance with these changes, and we will review those processes when the document is made available.

For all other alerts, EIU personnel review the alerts and disseminate them to supervisors and District command if alerts indicate the potential for biased activity or thresholds are exceeded for particular actions such as external complaints, data validations, and others. Once the supervisors receive the alert investigation, they employ a template (Attachment B of GH-5 [Early Identification System]) to conduct the investigation and report their findings and results to the chain of command through BlueTeam. MCSO has also created an EIS Alert Review Group (ARG) to evaluate the closure of alert investigations. We had no immediate concerns with our review of alert closures for this quarter, and we concur with MCSO's compliance rate of 100% for this period. Finally, while most investigations result in a meeting with a supervisor, there was one during this quarter that also resulted in meeting with a commander, and another that resulted in the reassignment of a deputy.

***Paragraph 73.** Within 180 days of the Effective Date, MCSO shall either create a unit, which shall include at least one full-time-equivalent qualified information technology specialist, or otherwise expand the already existing role of the MCSO information technology specialist to facilitate the development, implementation, and maintenance of the EIS. MCSO shall ensure that there is sufficient additional staff to facilitate EIS data input and provide Training and assistance to EIS users. This unit may be housed within Internal Affairs ("IA").*

### **In Full and Effective Compliance**

The Bureau of Internal Oversight (BIO) is overseen by a captain and is comprised of three Units designed to achieve different compliance functions. Each is a fully operational Unit headed by a lieutenant with both sworn and civilian staff responsible for diverse but interrelated oversight functions.

The Early Intervention Unit (EIU) coordinates the daily operation of the EIS. This unit evaluates alerts generated by the EIS, reviews them, and sends out investigations to District personnel as prescribed by policy.

The Audits and Inspections Unit (AIU) has developed and carries out ongoing inspections to ensure that deputies and supervisors are using the EIS properly and to the fullest extent possible. When AIU discovers deficiencies, it sends out BIO Action Forms to the affected Districts and individuals; and ensures the return of the appropriate forms.

The Traffic Stop Analysis Unit (TSAU) was most recently created due to the complexities of generating all of the statistical reports related to traffic and patrol functions of MCSO. The leaders of these units respond to specific requests made by us and the Parties and appear collectively during our site visit meetings to answer any questions related to the operation of BIO.

Over the last 18 months the EIS database has been expanded to include Incident Reports (IRs), Non-Traffic Contact Forms (NTCFs), records from the Arizona Office of Courts (AOC), and training and policy receipt records from the Cornerstone software program (the HUB). Supervisors now have much more information available to them about the deputies under their command than they ever had in the past.

On October 5, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 74.** MCSO shall develop and implement a protocol setting out the fields for historical data, deadlines for inputting data related to current and new information, and the individuals responsible for capturing and inputting data.*

**Phase 1:** In compliance

- GH-5 (Early Identification System), most recently reviewed on December 16, 2021.
- EIU Operations Manual, currently under revision.

**Phase 2:** In compliance

MCSO has met the requirements of this Paragraph by identifying the data to be collected and the responsibility of persons across the organization to review, verify, and inspect the data making up the early intervention system. These roles and responsibilities are originally developed in GH-5 (Early Identification System) and more comprehensively elaborated in Section 200 (Duties and Responsibilities), approved in August 2019, of the EIU Operations Manual.

MCSO has not yet completed the revision of the EIU Operations Manual. Currently, MCSO has approximately 90% of the manual finalized. The remaining 10% of the manual is comprised of the ongoing development of the methodologies and responsibilities for the Traffic Stop Monthly Reports, as well as the revision of the thresholds dependent on the results from the TSMR and non-traffic threshold analyses being coordinated by EIU personnel. The manual sections pertaining to this Paragraph have already been finalized and published; therefore, MCSO has achieved Phase 1 compliance.

MCSO has shown progress in the development of a data-handling protocol since the publication of earlier TSARs, which were fraught with problems. These processes have been memorialized in the EIU Operations Manual (Section 306), which was approved in July 2020. Aside from Section 200, noted above, Section 305 (Software Change Control Processes), approved in October 2018, is intended to ensure that all modifications to software or data collection are coordinated in a prospective fashion before any implementation occurs. These software changes are provided to us on a monthly basis through regular document requests and are discussed during the quarterly site visit meetings. During this quarter, MCSO introduced two new dropdown items for extended stops as a result of findings in prior TSQR analyses. The first is the ability of deputies to note license issues arising during the stop, and the second is a broader “other issue” that may lead to extended stops. The deputies are required to elaborate in comment fields what those issues may involve. Each of these sections of the EIU Operations Manual expands upon policy that has already been approved.

MCSO has also created a committee of personnel from each unit that handles, or adds to, traffic data before it is analyzed. The reports from the regular monthly meetings of this group are made available to us and show the attention to detail and memorialization of changes put in place to improve data processes. Nonetheless, during the analysis of data related to the initial runs of the TSMR process in late 2020 and early 2021, MCSO discovered over 500 traffic stops that had inaccurate traffic stop location coordinates assigned to them. Traditionally, dispatchers are to make note of traffic stops involving inaccurate coordinates and manually adjust these at the end of each shift. This procedure was not performed during April 2020-March 2021. Upon discovery of this oversight during the analysis of traffic stop data, MCSO notified us and the Parties of this problem and immediately began manually correcting the inaccurate coordinates so that these stops could be used in both the TSMR and TSAR6 analyses. MCSO is also investigating what led to this oversight and will be proposing protocol modifications to ensure it does not occur again. At present, TSAU personnel are routinely checking to ensure that no default locations are included in data produced for analytic purposes on a monthly basis. We will review the process modifications when they are produced.

Finally, EIU produces a monthly report for benchmarks not related to the traffic stop methodologies. We routinely use these monthly tables to evaluate compliance with various Paragraphs within the Court Order. For traffic-related Benchmarks 3 and 8 (Paragraph 67), MCSO documents both traffic stops involving immigration inquiries and data validation errors committed by deputies. During this reporting period, there were no immigration inquiries, and there were six data validation alerts: three in July; one in August; and two in September.

**Paragraph 75.** *The EIS shall include a computerized relational database, which shall be used to collect, maintain, integrate, and retrieve:*

- a. *all misconduct Complaints or allegations (and their dispositions), excluding those made by inmates relating to conditions of confinement or conduct of detention officers (i.e., any complaint or allegation relating to a traffic stop shall be collected and subject to this Paragraph even if made by an inmate);*
- b. *all internal investigations of alleged or suspected misconduct;*
- c. *data compiled under the traffic stop data collection and the patrol data collection mechanisms;*
- d. *all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the County and/or its Deputies or agents, resulting from MCSO Patrol Operations or the actions of MCSO Patrol Operation Personnel;*
- e. *all arrests;*
- f. *all arrests in which the arresting Deputy fails to articulate probable cause in the arrest report, or where an MCSO Supervisor, court or prosecutor later determines the arrest was not supported by probable cause to believe a crime had been committed, as required by law;*
- g. *all arrests in which the individual was released from custody without formal charges being sought;*
- h. *all Investigatory Stops, detentions, and/or searches, including those found by the Monitor, an MCSO supervisor, court or prosecutor to be unsupported by reasonable suspicion of or probable cause to believe a crime had been committed, as required by law;*
- i. *all instances in which MCSO is informed by a prosecuting authority or a court that a decision to decline prosecution or to dismiss charges, and if available, the reason for such decision;*
- j. *all disciplinary action taken against employees;*
- k. *all non-disciplinary corrective action required of employees;*
- l. *all awards and commendations received by employees;*
- m. *Training history for each employee; and*
- n. *bi-monthly Supervisory observations of each employee.*

**Phase 1:** In compliance

- EA-3 (Non-Traffic Contact), most recently amended on June 28, 2019.
- GC-13 (Awards), most recently reviewed on March 17, 2022.
- GH-5 (Early Identification System), most recently reviewed on December 16, 2021.
- EIU Operations Manual, currently under revision.

- Professional Services Bureau Operations Manual, most recently amended on December 21, 2020.

**Phase 2:** In compliance

Since 2017, MCSO has placed into production data interfaces for Incident Reports (IRs), Non-Traffic Contact Forms (NTCFs), Justice Court turndowns (AOC) and the Cornerstone software program (the HUB) that provides reports for training and policy acknowledgment. MCSO continues to develop some inspections or analytic reports that ensure that personnel are accurately using the EIS data available; however, the data do exist in the EIS and are accessible by personnel we have interviewed during each site visit. We will continue to evaluate and monitor the use of EIS in furtherance of the Orders. During our last in-person site visit, in January 2020, we also reviewed with MCSO representatives how the data for the following Subparagraphs appear on-screen and are accessible to first-line supervisors. We found no issues of concern during this review. We anticipate conducting a similar review when we resume our in-person site visits.

Paragraph 75.a. requires that the database include “all misconduct Complaints or allegations (and their dispositions),” with some exclusions.

EIPro, a web-based software application that allows employees and supervisors to view information in the IAPro case management system, includes the number of misconduct complaints and allegations against deputies. Since February 2017, both open and closed cases have been viewable by supervisors. PSB controls the ability to view open cases based upon the parties who may be involved. PSB personnel developed a protocol to write the summaries for both open and closed cases that appear in the EIS. This protocol has been approved, and was incorporated into the PSB Operations Manual that was published on December 13, 2018. Each month, we receive a spreadsheet of open and closed external complaints as they appear in EI Pro for supervisors to review. Our examination of these descriptions for July through September found that these summaries meet our expectations. Additionally, during all site visits between 2017 and January 2020, we observed that field supervisors could easily access these summaries and understand the types of issues involved in the complaints. Supervisors conducting alert investigations have also routinely referred to a review of complaint summaries as a portion of their investigative process. Supervisors are also advised that they can always contact EIU and PSB for clarification if it is necessary.

MCSO is in compliance with this Subparagraph.

Paragraph 75.b. requires that the database include “all internal investigations of alleged or suspected misconduct.”

Corresponding to the discussion above involving external complaints, internal investigation summaries also appear in the IAPro system. All complaint summaries, open and closed, have been viewable since February 2017. PSB uses a standard protocol to develop the case summaries and access limits. We approved this protocol, and it is included in the PSB Operations Manual. Each month, we receive a spreadsheet of internal allegations as they appear to supervisors in EIS. Our review of the summaries for July through September found these summaries to be transparent and easily understandable. During our past site visits, we have found that line supervisors are also able to easily access the summaries of open and closed internal investigations pertaining to

their subordinates. Supervisors also have referred to these summary fields while conducting alert investigations. Field supervisors always have the option of requesting additional information from EIU and PSB should they deem the summaries insufficient.

MCSO is in compliance with this Subparagraph.

Paragraph 75.c. requires that the database include “data compiled under the traffic stop data collection and the patrol data collection mechanisms.”

MCSO has created electronic forms to collect data from traffic stops, incidental contacts, and warnings.

MCSO has also created interfaces with EIS for remote databases including Incident Reports (IRs) and Non-Traffic Contact Forms (NTCFs). These reports are readily available to supervisors to review within EIS. Field supervisors have shown that they have the ability to view IRs and NTCFs during our past in-person site visits. AIU already conducts an inspection of IRs and has revised the methodology to improve and streamline the inspection process. We have suggested, over the past two years, that MCSO create a similar inspection for NTCFs, as well as propose an analytical strategy to examine whether any racial or ethnic inconsistencies may exist in the incidents documented on the NTCF. MCSO produced a brief proposal of the methods they would use to analyze NTCFs based upon these ongoing discussions. We, the Plaintiffs, and the Plaintiff-Intervenor provided comments on these proposals in early April 2020. Following several conference calls on both the forms and policy, EA-3 (Non-Traffic Contact), MCSO proposed an initial study that would only evaluate how the NTCF form and policy are being used across the agency. MCSO also proposes that following this review of the use of NTCFs, the agency will suggest an appropriate method to determine if disparities exist in the stops documented on these forms. While this evaluation has been placed on hold due to the importance of TSMR and TSQR planning and methods, we and the Parties conducted a conference call in early February 2022 and gave approval to the initial evaluation of NTCFs. MCSO has made available all investigative stop and field interview NTCFs each month. Our review of NTCFs for the current quarter did not find any issues of concern; however, a statistical methodology would allow a more comprehensive examination. MCSO notes in its 33<sup>rd</sup> quarterly compliance report that the review is underway and MCSO is evaluating the development of matrices to evaluate the NTCFs. We will continue to work with MCSO as this process moves forward.

This Paragraph requires that the data for such activities exists within EIS; however, Paragraphs 72, 81a., and 81b.vi. require an analysis of these stops. Therefore, while MCSO complies with this Subparagraph, MCSO will not achieve compliance for the other Paragraphs until a method of analysis is approved.

MCSO is in compliance with this Subparagraph.

Paragraph 75.d. requires that the database include “all criminal proceedings initiated, as well as all civil or administrative claims filed with, and all civil lawsuits served upon, the County and/or its Deputies or agents, resulting from MCSO Patrol Operations or the actions of MCSO Patrol Operation Personnel.”

MCSO's Legal Liaison Section receives and forwards this information to EIU for entry into the EIS database. Supervisors have demonstrated the ability to access this information during our site visits. In addition, in one of the monthly production requests involving this Paragraph, we noted that during the January to March 2020 time period, there were 14 "notice of claim" incident type alerts; but none were sent to supervisors for further investigation. During April through June of the same year, we noted 67 "notice of claim" incident type alerts with three being sent to supervisors for investigation.

During our July 2020 remote site visit, we requested clarification on these particular alerts through a document request. BIO command staff advised that they had recently discovered that there was a backlog of emails from the Legal Liaison Section regarding Notice of Claims. In October 2020, the EIU lieutenant noted that the backlog of Notice of Claims had been rectified and that new internal processes were adopted to ensure that such a backlog would not go undetected in the future. As this appears to have been a unique issue that MCSO responded to quickly, we have not removed MCSO from compliance with this Subparagraph. We have not observed any similar spike in activity regarding this Subparagraph and will periodically request an examination of the notice of claims review process. To date, no new issues have occurred.

MCSO is in compliance with this Subparagraph.

Paragraph 75.e. requires that the database include "all arrests."

Arrests may not always occur as a result of a traffic stop. MCSO, therefore, has placed into production an interface between EIS and the Jail Management System (JMS). This interface allows supervisors to easily access information regarding arrests that cannot be viewed through traffic data. During our site visits, supervisors have demonstrated the ability to access the IRs and related arrest information. The timeliness and sufficiency of that review is evaluated under Paragraph 93.

MCSO is in compliance with this Subparagraph.

Paragraph 75.f. requires that the database include "all arrests in which the arresting Deputy fails to articulate probable cause in the arrest report, or where an MCSO Supervisor, court or prosecutor later determines the arrest was not supported by probable cause to believe a crime had been committed, as required by law."

Incident Reports (IRs) are housed in the TraCS (Traffic and Criminal Software) system. Supervisors must review and sign off on IRs for each deputy involving an arrest or detention of a suspect within 72 hours of the incident. Supervisors are also required to ensure that probable cause exists for each charge or arrest outlined within an IR. AIU additionally conducts an inspection of IRs to ensure that all policy requirements are met.

If a court or prosecutor decides not to prosecute a case, both the deputy and their immediate supervisor are notified. In 2019, MCSO created a new inspection that combined IR and County Attorney Turndown inspections. MCSO's intent is to catch instances of reasonable suspicion and probable cause issues earlier in the process. Other deficiencies result in BIO sending Action Forms to the appropriate District personnel.

During this reporting period, MCSO reported compliance rates in excess of 99%, using the entire matrix of issues the agency employs to investigate IRs. We concur with these findings for July through September. BIO sent Action Forms to the Districts for the deficiencies in the original report and the supervisors who failed to find these deficiencies before signing off on the reports.

The inspections show that the data exist within EIS, even though the manner of computing compliance differs between us and MCSO.

MCSO remains in compliance with this Subparagraph.

Paragraph 75.g. requires that the database include “all arrests in which the individual was released from custody without formal charges being sought.”

The ability to capture this information depends upon what actually occurred within the context of the interaction. If the suspect was taken into physical custody but released prior to booking, there would be a JMS record, as indicated in Subparagraph 75.e. above. Therefore, MCSO could use the interface described above to pull the relevant data elements into EIS. However, if the incident does not rise to the point of physical custody and detention, then it would likely yield an Incident Report, covered under Subparagraph 75.f. above or an Investigatory Stop under Subparagraph 75.h. to follow. The interfaces for IR and NTCF data became operational prior to July 1, 2017. The new inspection process referred to above will also capture elements useful for the evaluation of this Subparagraph.

MCSO is in compliance with this Subparagraph.

Paragraph 75.h. requires that the database include “all Investigatory Stops, detentions, and/or searches, including those found by the Monitor, an MCSO supervisor, court or prosecutor to be unsupported by reasonable suspicion of/or probable cause to believe a crime had been committed, as required by law.”

MCSO has created interfaces for both IRs and NTCFs. As noted in 75.f., our compliance calculation for inspection of IRs for this reporting period exceeds 99%. AIU sent BIO Action Forms (BAFs) to Districts with deficiencies. In addition, BIO is working on a separate inspection to track repetitive BAFs received by individuals and Districts.

In July 2017, the interface between EIS and the database for NTCFs was placed into production. MCSO also reissued EA-3 (Non-Traffic Contact) and amended the policy on June 14, 2018 (and further amended it on June 28, 2019). This policy specifies the responsibility of MCSO personnel regarding different types of search occurrences. If the search is related to a traffic stop, it should be captured on the VSCF. Searches occurring within activities resulting in an Incident Report will be captured under Subparagraph 75.e., and NTCF searches fall under this Subparagraph.

Initially, the number of NTCF reports was insignificant; however, since May 2018, we generally receive between 15-25 NTCFs for investigative stops each month. These are all captured within EIS as required by this Subparagraph (as well as 75.c.). During the last quarter of 2019, we also requested a random sample of Field Information stops that were documented using the NTCF. Our review of these indicated that approximately 80% of civilian stops labeled as Field Information could easily have been labeled as Investigative stops. We apprised MCSO of our findings and have subsequently provided MCSO with our summary evaluation. We have also

suggested that MCSO develop a methodology to statistically analyze the collection of NTCFs to look for possible issues of racial or ethnic bias in the way these interactions are conducted. The development of a statistical examination of NTCF stops should be a priority for MCSO once the Traffic Stop Methodologies for the Monthly Analyses are complete. Such an examination is required by Paragraphs 72 and 81.b.vi. MCSO has drafted an initial proposal for the evaluation of how NTCF forms and policy are being used across the agency. We revisited this initial proposal during a conference call in early February 2022, and granted MCSO the approval to move ahead with that inquiry. Depending upon the outcome of that review, MCSO noted that the agency is ready to modify, where appropriate, both the policy and forms related to NTCFs; and will undertake a process to ensure that any potential indications of bias are discovered. MCSO's 33<sup>rd</sup> quarterly compliance report notes that the initial evaluation described above is underway and they are developing a potential matrix of items to evaluate all NTCFs. We will evaluate these processes as they are produced. Since NTCFs and IRs are included in EIS, MCSO is in compliance with this Subparagraph. Our review of investigative stops and field interviews during this quarter yielded no issues of concern.

MCSO is in compliance with this Subparagraph.

Paragraph 75.i. requires that the database include "all instances in which MCSO is informed by a prosecuting authority or a court that a decision to decline prosecution or to dismiss charges, and if available, the reason for such decision."

The EIS database has included both County Attorney Actions and an interface with the Justice Courts (AOC) since July 2017. MCSO began using a new method that merged the County Attorney Turndown Inspection with the IR inspection. The first inspection was produced in August 2019 using July data. For this quarter, our computed compliance rates for the IRs exceeded 99% and conforms to the rates reported by MCSO. For this period, the IR inspection did not include any County Attorney Turndowns, as none were received indicating a problem with probable cause. AIU sent several BIO Action Forms to the Districts for review due to the deficiencies found by the inspectors. For this Subparagraph, we also receive a random selection of IRs turned down for prosecution from MCSO and the Justice Courts. Our review of these indicate that most had been turned down using the generic phrases "no reasonable likelihood of conviction" or "dismissed to aide in prosecution." We found no other significant problems with the reports reviewed. We will continue to evaluate the inspection and IRs in future quarterly status reports.

MCSO is in compliance with this Subparagraph.

Paragraph 75.j. requires that the database include "all disciplinary action taken against employees."

MCSO currently tracks disciplinary actions in the IAPro system (for this and Paragraphs 26, 28, 69, and 89), which allows supervisors to search the history of their employees in EIS.

AIU produces a monthly alert inspection report relevant to Paragraphs 70, 71, 75, and 81. The possible outcomes from these alert investigations range from no further action to referral to PSB. In the alert inspection reports from July through September, there were seven instances where cases were referred to PSB for investigation.

Additionally, the Administrative Services Division replies to a monthly request that incorporates this Subparagraph; and the Division's report indicates that no discipline was imposed for bias-related incidents between July and September 2022.

MCSO is in compliance with this Subparagraph.

Paragraph 75.k. requires that the database include "all non-disciplinary corrective action required of employees."

MCSO produces a Supervisory Note inspection (in particular, bimonthly reviews of a deputy's performance) and the monthly alert report described in the previous Subparagraph to fulfill the requirements for this Subparagraph. In addition, we also review up to 15 closed alert inspections conducted by supervisors each month. (If there are more than 15, the cases are randomly selected from the total.) As noted previously, the majority of cases are closed through a meeting with a supervisor; however, during this reporting period, there was one case where there was a meeting with a commander, and another which resulted in reassignment of the deputy.

Supervisors also are required to make two comments regarding their subordinates each month in their BlueTeam Notes. In the Supervisor Notes inspections for this quarter, there were no deficiencies found.

MCSO is in compliance with this Subparagraph.

Paragraph 75.l. requires that the database include "all awards and commendations received by employees."

MCSO first published GC-13 (Awards) on November 30, 2017, and most recently revised this policy on March 17, 2022. With this publication, MCSO created categories for awards or commendations that could be tracked within the EIS database. With the introduction of the newest version of EIPro, these fields are also searchable by supervisors. During our past site visits, supervisors demonstrated how they could search these fields and locate awards of their subordinates in the EIS data. According to the monthly alert inspection reports for July through September, there was one recommendation for high award, one commendation recommendation and two award entries by supervisors.

MCSO is in compliance with this Subparagraph.

Paragraph 75.m. requires that the database include the "[t]raining history for each employee."

MCSO has transitioned from the Skills Manager System to the Cornerstone (the HUB) software program. The HUB has replaced the E-Policy and E-Learning programs. The HUB routinely updates recent training and policy reviews for deputies and is visible by immediate supervisors. MCSO also created an interface between the HUB and EIS.

During our past site visits, all field supervisors who we contacted stated that they were familiar with the HUB and were able to access the information contained therein. Several supervisors noted how they assigned training to particular deputies following alert investigations they completed. In addition, during our regular conference calls regarding TSMR methodology, we have placed particular importance on the development of comprehensive supervisor training that would ensure that they will be able to comprehend and interpret the statistical data produced each

month in a way that would promote a transparent intervention process. MCSO personnel assured us that supervisors have ready access to the training and policy reviews of their subordinates. We will continue to evaluate supervisors' ability to easily search and use EIS during future site visits. As noted above, this will include not only a review with EIU technical staff but field supervisors at the Districts when we resume our in-person site visits.

MCSO is in compliance with this Subparagraph.

Paragraph 75.n. requires that the database include "bi-monthly Supervisory observations of each employee."

The Audits and Inspections Unit (AIU) conducts a monthly inspection of Supervisor Notes. One of the indicators AIU evaluates is whether supervisors are making two notes per deputy each month. For July through September, AIU reported two instances where supervisors failed to make two reviews for each of their subordinates, and sent BIO Action Forms to the relevant Districts for processing.

MCSO is in compliance with this Subparagraph.

With the operationalization of interfaces for Incident Reports, Non-Traffic Contact Forms, the Arizona Office of the Courts, and the HUB, EIS now contains the information required by the Order. MCSO has worked diligently to use some of the data above to investigate compliance rates with the Orders. MCSO continues to develop other inspections or data analytic methods in response to our recommendations. During our regular conference calls with MCSO, Plaintiffs, and Plaintiff-Intervenor, we have continued to clarify how MCSO utilizes the data being collected and recommended ways it might gain further transparency in the ways it analyzes and presents information gleaned from these analyses.

***Paragraph 76.** The EIS shall include appropriate identifying information for each involved Deputy (i.e., name, badge number, shift and Supervisor) and civilian (e.g., race and/or ethnicity).*

### **In Full and Effective Compliance**

MCSO has instituted a quality check process for Vehicle Stop Contact Forms (VSCFs) that requires supervisors to review all traffic stop documents within three days of the stop. AIU also conducts an inspection of the timeliness of these reviews as well as a second inspection on Traffic Stop Data. Each of these inspections are based upon a stratified random sample of traffic stops that we conducted. The Traffic Stop Data inspection employs a matrix that ensures that the name, serial number, and unit of the deputy is included on the VSCF in addition to the identity and race/ethnicity of the driver. The overall rate of compliance for the Traffic Stop Data inspections reported by MCSO exceeded 98.% for this reporting period, and none of the deficiencies involved identification of deputies or drivers. As previously noted, our compliance calculations for this period were slightly lower due to the fact that we do not employ a matrix to assess compliance, but rather judge individual cases as deficient if any significant information is determined not to be consistent across traffic stop forms or CAD.

MCSO has incorporated patrol data into the EIS through the creation of interfaces for Incident Report (IR) and Non-Traffic Contact Form (NTCF) documents. Each of these documents lists the required name of the deputy and civilian, as well as the ethnicity of the civilian, in accordance with this Paragraph. AIU conducts an inspection of IRs, including a check for racial/ethnic bias in the reporting documents and the identification of all parties contacted as a result of the incident. We have found no recent instances where the identify of a deputy or persons contacted was not included on these forms. Non-Traffic Contact Forms contain the same basic information about the identity of the deputy making the contact and the persons being contacted. While MCSO does not yet have an inspection of NTCFs, they do provide us with copies of all the documents for investigative stops and field information. Up to this point, we have not found a repetitive problem with NTCF documentation that includes the criteria required by this Paragraph.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 77.** MCSO shall maintain computer hardware, including servers, terminals and other necessary equipment, in sufficient amount and in good working order to permit personnel, including Supervisors and commanders, ready and secure access to the EIS system to permit timely input and review of EIS data as necessary to comply with the requirements of this Order.*

#### **In Full and Effective Compliance**

Since our earliest site visits in 2014, we have addressed the issue of “necessary equipment, in sufficient amount and in good working order” with MCSO. As part of our monthly document requests, we receive an accounting, by District, of how many vehicles have functioning TraCS systems.

Since the end of 2015, we have found that all marked patrol vehicles were properly equipped with TraCS equipment. MCSO developed EB-2 (Traffic Stop Data Collection), which states that in the event that a TraCS vehicle is not operational, or available, each District possesses the necessary equipment at the substation for deputies to input his/her traffic stop information before the end of the shift. Due to the mountainous regions throughout Maricopa County, there have always been connectivity issues. However, these areas are well-known to Patrol deputies; and they have demonstrated how they adapt to connectivity problems. The VSCF also allows deputies to note issues with technology on a traffic stop.

During our past visits to the Districts, we regularly spot-checked the facilities and patrol cars; and found that they had functioning TraCS equipment, and that each District office had available computers for any occurrence of system failures with vehicle equipment. We have been unable to conduct these inspections since January 2020 as a result of holding our site visits remotely; however, we will conduct these reviews when we resume in-person site visits.

At present, the technology and equipment available at MCSO meet the requirements of the Order. On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

We will continue to conduct our spot inspections at the Districts, and MCSO will apprise us of any event that falls within the scope of this Paragraph.

**Paragraph 78.** *MCSO shall maintain all personally identifiable information about a Deputy included in the EIS for at least five years following the Deputy's separation from the agency. Information necessary for aggregate statistical analysis will be maintained indefinitely in the EIS. On an ongoing basis, MCSO shall enter information into the EIS in a timely, accurate, and complete manner, and shall maintain the data in a secure and confidential manner. No individual within MCSO shall have access to individually identifiable information that is maintained only within EIS and is about a deputy not within that individual's direct command, except as necessary for investigative, technological, or auditing purposes.*

#### **In Full and Effective Compliance**

GH-5 (Early Identification System) clearly states that employees only have access to EIS in furtherance of the performance of their duties, and that any other unauthorized access will be addressed under MCSO's discipline policy. The policy also notes that access to individual deputy information will be limited to appropriate supervisory/administrative personnel of that deputy. In addition, the policy states that personal information will be maintained in the database for at least five years following an employee's separation from the agency; however, all other information will be retained in EIS indefinitely.

The most recent occurrences of a substantiated misuse of MCSO's computer system occurred in 2011 and 2015. As a result, MCSO published a System Log Audit operating procedure in November 2017 that required PSB to notify the Technology Management Bureau of any investigations involving a system breach. We fully vetted this operating procedure (BAS SOP 17-4) during our January 2018 site visit. MCSO reported no system breaches occurring since our January 2020 site visit. In addition, we receive summaries of all internal investigations each month. In March 2019, one case indicated that a deputy was under investigation for potentially misusing the Arizona Criminal Justice Information System (ACJIS); and in another, it was alleged that booking information might have been used for social media.

In April 2020, there was an external complaint that a deputy may have run a criminal history check on someone for a relative. These cases have not triggered the operating procedure noted above and, according to MCSO, PSB has either not yet completed its investigations, or they have found nothing to substantiate the original claims.

MCSO's concern for the integrity of information in EIS is further exemplified by the protocols that PSB has created to meet the requirements of Subparagraphs 75.a. and 75.b. regarding purview of open complaints and internal investigations. PSB not only controls who can view summaries of open investigations but has created a protocol for creating the summaries of open investigations to protect the integrity of the cases while they are being processed.

MCSO has also created a work group to ensure the integrity of traffic stop data used for analysis. The protocols used by this work group are incorporated into Section 306 of the EIU Operations Manual. We have approved this section, and it has been incorporated into the manual as finalized.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 79.** *The EIS computer program and computer hardware will be operational, fully implemented, and be used in accordance with policies and protocols that incorporate the requirements of this Order within one year of the Effective Date. Prior to full implementation of the new EIS, MCSO will continue to use existing databases and resources to the fullest extent possible, to identify patterns of conduct by employees or groups of Deputies.*

**Phase 1:** In compliance

- GH-5 (Early Identification System), most recently amended on December 16, 2021.

**Phase 2:** Not in compliance

The employment of the EIS database remains limited as MCSO has not yet completed and published the results of new methodologies for the Traffic Stop Monthly Report (TSMR). While the pilot period for the analysis of TSMR data wound down during this reporting period, and MCSO received approval for all the documents and training protocols related to the TSMR, MCSO must publish these documents for pilot to be fully complete. During our last several (in-person and remote) site visits, we have also recommended to MCSO that the agency needs to create an analytical plan for the Non-Traffic Contact Forms that have accumulated over the past several years. Until these are complete and operational, MCSO will not achieve Phase 2 compliance with this Paragraph. MCSO notes in its 33<sup>rd</sup> quarterly compliance report that the NTCF evaluation is underway. We and the Parties continue to work with MCSO to complete each of these analytic reports.

MCSO published the Seventh Traffic Stop Annual Report (TSAR), which is discussed in other Paragraphs. Although the report concludes that systemic bias in patrol functions through traffic stop outcomes does appear to exist, they have not yet shown a statistically significant change in the level of potential bias. For instance, for stop length, MCSO reported a decline from 2018 to 2019 for Latinos and minorities combined, but an increase from 2019 to 2020 and a decrease from 2020 to 2021. A similar trend was found for searches of Latinos and minorities combined. Additionally, MCSO reported an increasing citation rate for Latinos from 2018 to 2019 and 2020; however, a decline occurred for 2021 for all minorities grouped together and Latinos compared separately. MCSO is developing a plan to ensure that subsequent TSARs are able to track trends

in the level of potential bias/disparity found in traffic stop outcomes. In a recent Traffic Stop Quarterly Report (TSQR8) “Disparities Over Time,” MCSO investigated the disparities between stop length, citations, arrests and searches over time. The agency analyzed data from the time period 2017 to 2021 in a variety of ways and found some positive and some negative changes. MCSO summarized these findings in the conclusions: “The results of the analyses performed do not demonstrate a clear pattern of disparities consistently increasing or decreasing over time.” MCSO also noted that the agency believes that the lack of longer-term trends may be due to the fact that many changes to practice and policy occurred prior to 2017. We will continue to work with MCSO on the issue of trend analyses.

MCSO’s plan for the analysis of monthly traffic data also stems from the foundation created by the more recent Fourth through Seventh TSARs. MCSO conducted a pilot program for TSMR processes from April 2021 to October 2022. The methodologies and processes have been modified each time a problem with the analysis or intervention occurred. We are currently working with MCSO to finalize all documents and policies relevant to the TSMR. The information from these analyses has been used to inform and refine the vetting processes developed in conjunction with us and the Parties. Based on the vetting processes, TSAU recommends actions ranging from discounting of flags to full intervention processes involving remedies for the particular issues that arose during the vetting process. We and the Parties have been involved in each step of these processes. MCSO has also proposed an initial method to analyze NTCFs and received approval to proceed with the initial evaluation of NTCFs during a conference call in February 2022. We will comment on the NTCF review as they progress in future quarterly reports.

In the meantime, EIU and AIU pull together data to produce reports and inspections of both deputy and supervisor activity. The EIS automatically triggers alerts for repetitive actions, such as receiving multiple BIO Action Forms or external complaints. However, for the past two years BIO has been reevaluating the threshold levels that trigger several of these alerts and, in some instances, suspended them during this period. The EIU uses this information to create monthly reports and to determine whether an investigation by a supervisor is required. AIU publishes an inspection on EIS Alert Processes to ensure that alert investigations are conducted within policy timeframes and to summarize the manner in which investigations were closed. Due to the relatively low number of alert investigations completed each month, MCSO recommended that the EIS Alert inspection occur on a quarterly basis. We agreed with this proposal. The EIS Alert report for the third quarter noted 100% compliance with the policy timelines. During this quarter, one investigation led to a meeting with a commander; and another resulted in the reassignment of a deputy. The majority of cases are resolved with a meeting between the deputy and a supervisor. MCSO is developing an extension of this inspection, to include an evaluation of the effect of interventions that supervisors recommend and implement. This final component to the inspection is crucial for compliance with other Paragraphs.

AIU also uses the EIS database to generate numerous inspections of traffic stop data, Supervisor Notes, and Incident Report inspections, among many others. When deficiencies are found, AIU sends out BIO Action Forms to the District command to rectify the situation and memorialize what actions are taken. These inspections are critical to evaluate compliance with several

Paragraphs in the Order. AIU has already automated an alert threshold for repeated Action Forms for the same types of events. An initial investigation of repetitive Action Forms in 2019 showed that a small number of deputies receive three or more Action Forms, while the vast majority of deputies receive only one Action Form. However, since that time BIO has been working to implement a less cumbersome process that could be produced twice each year. The BIO Captain has kept us regularly informed on the progress for this audit and submitted a proposal that we returned with additional feedback. The goal of this inspection is to track deficiencies by Districts, shifts, and squads to focus corrective measures in the most beneficial way. MCSO's 33<sup>rd</sup> quarterly compliance report notes that the study had been completed and was awaiting approval and publication. We will review the documents as they are made available.

### ***b. Training on the EIS***

***Paragraph 80.*** *MCSO will provide education and training to all employees, including Deputies, Supervisors and commanders regarding EIS prior to its implementation as appropriate to facilitate proper understanding and use of the system. MCSO Supervisors shall be trained in and required to use EIS to ensure that each Supervisor has a complete and current understanding of the employees under the Supervisor's command. Commanders and Supervisors shall be educated and trained in evaluating and making appropriate comparisons in order to identify any significant individual or group patterns. Following the initial implementation of the EIS, and as experience and the availability of new technology may warrant, MCSO may propose to add, subtract, or modify data tables and fields, modify the list of documents scanned or electronically attached, and add, subtract, or modify standardized reports and queries. MCSO shall submit all such proposals for review by the Monitor pursuant to the process described in Section IV.*

### **In Full and Effective Compliance**

MCSO's curriculum for Supervisor Responsibilities: Effective Law Enforcement (SRELE) regularly includes a refresher and updates for supervisors regarding how most effectively to use EIS tools and complete Alert Investigations for their subordinates within policy guidelines. MCSO is also modifying the Traffic Stop Monthly Report (TSMR) analysis and participating in regular conference calls with us and the Parties. A significant portion of these discussions revolve around how to effectively train supervisors to use the TSMR process in the furtherance of their supervisory duties and in accordance with the Court Order. Additionally, MCSO recently published the first eight Traffic Stop Quarterly Reports (TSQRs). As we have noted in earlier Paragraphs, the conclusions and recommendations of each of these reports could prove useful for the continued refinement of supervisory training conducted by MCSO. We will continue to assist MCSO as it formulates training curriculum to enhance the supervisory functions of the Office.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***c. Protocol for Agency and Supervisory Use of the EIS***

***Paragraph 81.*** MCSO shall develop and implement a protocol for using the EIS and information obtained from it. The protocol for using the EIS shall address data storage, data retrieval, reporting, data analysis, pattern identification, identifying Deputies for intervention, Supervisory use, Supervisory/agency intervention, documentation and audit. Additional required protocol elements include:

- a. *comparative data analysis, including peer group analysis, to identify patterns of activity by individual Deputies and groups of Deputies;*
- b. *identification of warning signs or other indicia of possible misconduct, including, but not necessarily limited, to:*
  - i. *failure to follow any of the documentation requirements mandated pursuant to this Order;*
  - ii. *racial and ethnic disparities in the Deputy's traffic stop patterns, including disparities or increases in stops for minor traffic violations, arrests following a traffic stop, and immigration status inquiries, that cannot be explained by statistical modeling of race neutral factors or characteristics of Deputies' specific duties, or racial or ethnic disparities in traffic stop patterns when compared with data of a Deputy's peers;*
  - iii. *evidence of extended traffic stops or increased inquiries/investigations where investigations involve a Latino driver or passengers;*
  - iv. *a citation rate for traffic stops that is an outlier when compared to data of a Deputy's peers, or a low rate of seizure of contraband or arrests following searches and investigations;*
  - v. *complaints by members of the public or other officers; and*
  - vi. *other indications of racial or ethnic bias in the exercise of official duties;*
- c. *MCSO commander and Supervisor review, on a regular basis, but not less than bimonthly, of EIS reports regarding each officer under the commander or Supervisor's direct command and, at least quarterly, broader, pattern-based reports;*
- d. *a requirement that MCSO commanders and Supervisors initiate, implement, and assess the effectiveness of interventions for individual Deputies, Supervisors, and units, based on assessment of the information contained in the EIS;*
- e. *identification of a range of intervention options to facilitate an effective response to suspected or identified problems. In any cases where a Supervisor believes a Deputy may be engaging in racial profiling, unlawful detentions or arrests, or improper enforcement of Immigration-Related Laws or the early warning protocol is triggered, the MCSO shall notify the Monitor and Plaintiffs and take reasonable steps to investigate and closely monitor the situation, and take corrective action to remedy the issue. Interventions may include but are not limited to counseling, Training, Supervisor ride-alongs, ordering changes in practice or procedure, changing duty assignments, Discipline, or other*

*supervised, monitored, and documented action plans and strategies designed to modify activity. All interventions will be documented in writing and entered into the automated system;*

- f. a statement that the decision to order an intervention for an employee or group using EIS data shall include peer group analysis, including consideration of the nature of the employee's assignment, and not solely on the number or percentages of incidents in any category of information recorded in the EIS;*
- g. a process for prompt review by MCSO commanders and Supervisors of the EIS records of all Deputies upon transfer to their supervision or command;*
- h. an evaluation of whether MCSO commanders and Supervisors are appropriately using the EIS to enhance effective and ethical policing and reduce risk; and*
- i. mechanisms to ensure monitored and secure access to the EIS to ensure the integrity, proper use, and appropriate confidentiality of the data.*

**Phase 1:** In compliance

- GH-5 (Early Identification System), most recently reviewed on December 16, 2021.

**Phase 2:** Not in compliance

MCSO produces a number of reports and inspections that are relevant for this Paragraph. Due to issues with EIS data, methods of analysis and a change in vendors, MCSO has not been able to reliably produce the Traffic Stop Monthly Report (TSMR) based upon the criteria outlined in Paragraph 67.

MCSO has published the Seventh Traffic Stop Annual Report (TSAR); however, the analysis from these reports addresses issues of potential systemic bias across the entire traffic patrol function and cannot be employed to address potential individual-level biased activity. The TSMR, which has been in a pilot process for 18 months and is nearly finalized, will assist MCSO and its supervisors in evaluating the activity of individual deputies with regard to traffic stops and examine any behaviors that might suggest biased activity. MCSO will continue to share the results of its monthly analyses with us and the Parties, in addition to providing all documents related to the closing of any cases that have gone beyond the initial vetting process. During this quarter, MCSO recommended actions ranging from discounting of flags to full interventions involving remedies suitable to the findings of the vetting process.

MCSO has also published eight TSQRs: the first, evaluated how supervisors review and document traffic stop activity of their subordinates; the second, surveyed supervisors involved in the Third TSAR interventions about their experience in that process; the third examined how deputies employ the Extended Traffic Stop Indicators (ETSI) on the Vehicle Stop Contact Form (VSCF); the fourth examined long non-extended traffic stops (LNETs) to determine if there are particular deputies or areas of the County where these lengthy stops occur; the fifth expanded upon the Sixth TSAR to determine if particular traffic stop outcome disparities were more or less prevalent in certain Districts; the sixth explored in more detail the disparities found for citations and warnings for Latino drivers in prior TSARs; the seventh examined disparities across arrest types; and the

Eighth used data from the Fourth through the Seventh TSARs to look for potential trends in disparities over time. The Fourth and Sixth TSARs indicated a significant disparity for minority members, as opposed to whites, for particular equipment violations and licensure infractions; and the fifth report showed that the disparities in several outcomes were more pronounced in particular Districts. Each has yielded information that MCSO has proposed to use for the development of training, modification of policy, and dissemination of resources to improve supervisory capabilities and deputy performance.

Paragraph 81.a. requires that MCSO's EIS protocols include "comparative data analysis, including peer group analysis, to identify patterns of activity by individual Deputies and groups of Deputies."

The EIU has conducted monthly and annual analyses looking for outliers that may indicate that an individual is behaving in a biased or unprofessional manner, in accordance with Paragraphs 65, 66, and 67. The Traffic Stop Monthly Reports had been suspended for several years beginning in 2016. However, MCSO worked closely with us and the Parties to develop a robust process to analyze potential traffic stop disparities at the deputy level; and during the last 18 months, MCSO resumed TSMRs on a pilot basis. During that time, MCSO has proposed methodologies in consultation with its data analyses vendor. We and the Parties have had the opportunity during our site visits; and, most recently through regular conference calls, to ask questions, receive additional information and recommend modifications to the methodologies employed. Most importantly, MCSO has created a method to match deputies in the Annual and Monthly Reports using personal and professional characteristics that are intended to go beyond previous strategies that were based upon the geographic location of traffic stops alone. These methods have been met with support from deputies across the organization during meetings between MCSO personnel and the data analysis vendor (CNA). The pilot is coming to a close, and we are working with MCSO to finalize all documents, protocols, and policies relevant to the TSMR.

MCSO has published eight TSQRs. As noted above, the outcomes and recommendations could promote change in several ways throughout MCSO; however, they were not conducted in a way to compare peer supervisors.

MCSO has also created an interface for Non-Traffic Contact Forms (NTCFs) to be available in the EIS database; however, MCSO has not yet begun to develop a methodology to investigate whether patterns of problematic behavior, action, or bias might be occurring in the stops these forms document. We have discussed these issues with MCSO during our site visit meetings since October 2018. We and the Parties have commented on preliminary materials provided by MCSO, and we will continue to work with MCSO to use these civilian contacts to their fullest potential. MCSO has proposed an initial review of how the forms and policy, EA-3 (Non-Traffic Contact), are currently being employed across the organization to create an appropriate statistical methodology that is responsive to the needs of the Order. Most recently, in February 2022, we gave approval to MCSO to proceed with an initial inquiry into how NTCF forms have been used by deputies. In MCSO's 33<sup>rd</sup> quarterly compliance report, the agency notes that this investigation is currently underway. In future reports, we will summarize the findings of this investigation.

MCSO is not in compliance with this Subparagraph.

Paragraph 81.b. requires that MCSO's EIS protocols include "identification of warning signs or other indicia of possible misconduct."

GH-5 (Early Identification System) provides significant direction for employees and supervisors alike to understand what type of behaviors will be viewed as problematic. As noted above, the intent of the TSMR is to identify deputies who might be engaged in biased activity regarding who they arrest, cite, warn, or search; and MCSO has been working with us and the Parties on the implementation of the TSMR process.

MCSO is also revising the EIU Operations Manual, which will include sections on data protocols and the several analyses based upon the traffic stop and patrol data. The manual also includes thresholds for behavior ranging from failure to arrive on time for work to external complaints. BIO produced a revised EIS Alert Threshold Research/Background document in January 2022 as well as a proposal for an annual Threshold Analysis Review. We commented on these documents and requested a demonstration of the involved processes. We approved the proposal and received a demonstration of the annual review process during a conference call on February 16, 2022; but have yet to receive an updated version of Appendix A to the EIU Operations Manual that outlines the changes as a result of that review. We will continue to work with MCSO to refine and implement these new processes.

Finally, as noted in Subparagraph 81.a. and 81.b.vi, MCSO should utilize all patrol data to evaluate the behavior of deputies in comparison to their peers. While the volume of Non-Traffic Contact Forms (NTCFs) pales in comparison to traffic stops, there are enough accumulated forms for analyses to commence. As we noted in Paragraph 75, we had originally received all NTCFs for investigative stops each month. The volume ranges from 15-25 per month. In our review of these interactions, we have noted that they typically involve suspicious behavior, and violations of traffic laws while on bicycles or waterways. These violations are often concentrated in particular locations throughout the County that may make it more likely that minority members are contacted. We have suggested to MCSO that the agency create an analytic method to determine whether there may be trends in activity over time that may require closer examination to eliminate any possibility of bias. Since our July site visit in 2019, we also undertook an evaluation of a random sample of Field Information contacts captured on NTCFs. Our review found a large overlap between civilian contacts labeled as Field Information and those labeled as Investigative Stops. We have engaged MCSO in further discussions clarifying this distinction. Until such time as this is resolved, we will select a combined sample of NTCFs from both categories of civilian interaction. MCSO is currently proposing to investigate how the NTCF forms and policy are being used across the agency. We provided approval for this examination in February 2022. This would be an important first step that could lead to a more thorough analysis looking for potential indications of bias across these stops. In MCSO's 33<sup>rd</sup> quarterly compliance report, the agency notes that the initial investigation was underway. We and the Parties continue to engage in discussions with MCSO about these significant issues.

MCSO is not in compliance with this Subparagraph.

Paragraph 81.c. requires that MCSO's EIS protocols include "MCSO Commander and Supervisor review, on a regular basis, but not less than bimonthly, of EIS reports regarding each officer under the Commander or Supervisor's direct command and, at least quarterly, broader, pattern-based reports."

Supervisory Note inspections include four measures to assess how well supervisors are using EIS information to oversee the activity and behavior of their subordinates: making supervisory comments on deputies; reviewing their body-worn camera footage; making Employee Performance Appraisal (EPA) notations; and reviewing subordinates' EIS profiles. The overall compliance rate reported by MCSO for this quarter exceeds 99% based upon a random sample drawn by us. We concur with these findings. When deficiencies are found, AIU sends out BIO Action Forms to those Districts, no matter the level of compliance. We have also repeatedly requested additional information from MCSO when we encounter an issue of concern and MCSO has always willingly provided the needed information or additional data. Rarely have we noted deficiencies involving the same supervisors in consecutive months. MCSO has already included repetitive BIO Action Form (BAF) deficiencies as an alert allegation. AIU has developed and presented a proposal to better track BAFs by type, individual, and District to ensure that any corrective actions are targeted at the most appropriate level and to be able to determine if there are particular supervisors that appear repeatedly within specified timeframes.

It is important to note that in our review of 15 randomly selected alert investigations each month, we have noticed an increase in investigations due to repetitive BAFs. MCSO notes in its 33<sup>rd</sup> quarterly compliance report that the first BAF study has been completed and is currently being reviewed for publication. We will continue to report on the development of this proposal as it is made available.

MCSO is in compliance with this Subparagraph.

Paragraph 81.d. requires that MCSO's EIS protocols include "a requirement that MCSO Commanders and Supervisors initiate, implement and assess the effectiveness of interventions for individual Deputies, Supervisors, and units, based on assessment of the information contained in the EIS."

The EIS database generates alerts for issues ranging from data entry errors to internal and external complaints; however, many of the potential ongoing alerts are dependent upon the revision of alert thresholds which continue to undergo evaluation by MCSO as noted above. From these alerts, EIU personnel send out for investigation those alerts that are not redundant or mischaracterized in some fashion. Supervisors have a set amount of time – 30 days – to return these investigations with a description of their investigation and the outcome.

MCSO has created an EIS Alert Review Group (ARG) that evaluates the investigations of supervisors prior to closing an alert. The group ensures that the reports of the supervisors address all aspects of the assigned investigation and returns those that are deficient to the District for continued revision. Following the creation of the ARG, we have found the supervisors' investigations and summaries to be more complete and thorough. Over time, the review group's request for additional information has dropped below one third of the investigations evaluated. MCSO has provided us with the original alert investigation documents (Attachment B of GH-5 [Early Identification System]), as well as modified ones arising from the ARG's requests.

AIU has also created an inspection for EIS Alert Review Processes. This inspection initially determines whether the investigation was completed within policy timeframes of 30 days. The compliance rate for this quarter is 100%. We concur with this finding. MCSO has subsequently produced a proposal that also includes an evaluation of the effectiveness of interventions. We will continue to engage MCSO in this evaluation process in accordance with this and other Paragraphs. At present, there is no mechanism in place to adequately judge the effect of interventions. A portion of the TSMR process also includes an evaluation of the success of the interventions associated with that process.

MCSO is not in compliance with this Subparagraph.

Paragraph 81.e. requires MCSO's EIS protocols to include "identification of a range of intervention options to facilitate an effective response to suspected or identified problems. In any case where a Supervisor believes a Deputy may be engaging in racial profiling, unlawful detentions or arrests, or improper enforcement of Immigration-Related Laws or the early warning protocol is triggered, MCSO shall notify the Monitor and Plaintiffs and take reasonable steps to investigate and closely monitor the situation and take corrective action to remedy the issue. Interventions may include but are not limited to counseling, Training, Supervisor ride-alongs, ordering changes in practice or procedure, changing duty assignments, Discipline, or other supervised, monitored, and documented action plans and strategies designed to modify activity. All interventions will be documented in writing and entered into the automated system."

GC-17 (Employee Disciplinary Procedures) and GH-5 (Early Identification System) provide a wide range of options for supervisor interventions, as well as practical guidelines about how to employ those options. As noted above, GH-5 includes Attachment B, "Early Identification Alert Response Form." This form specifies the responsibility of supervisors and serves as a checklist of processes the supervisor should use. EIU also attaches any documents, citations, or BWC recordings the supervisor might need to conduct an inquiry. We began observing the use of these forms in April 2017. Over the past six months, we have found that alert investigations conducted by supervisors has improved. During this quarter, supervisors recommended over one dozen meetings with a supervisor, one meeting with a commander, and one reassignment of a deputy.

MCSO has also created an EIS Alert Review Group (ARG) to ensure that the closure of alerts is supported by documentation from supervisors and responsive to the needs of the organization. We have also worked with MCSO to propose an extension of alert investigation timeframes when documentation issues delay the process. We will continue to evaluate these as they are produced.

MCSO is in compliance with this Subparagraph.

Paragraph 81.f. requires that MCSO's EIS protocols include "a statement that the decision to order an intervention for an employee or group using EIS data shall include peer group analysis, including consideration of the nature of the employee's assignment, and not solely on the number or percentages of incidents in any category of information recorded in the EIS."

In the development of GH-5 (Early Identification System), MCSO has taken into consideration the nature of the employee's assignment. In prior versions of GH-5, MCSO created an appendix for thresholds that indicated, for example, that the "use of force" threshold was different for Detention and Patrol personnel. Detention personnel are much more likely to need to employ force than their Patrol counterparts. In the current version of GH-5, MCSO refers to thresholds that will be included in the EIU Operations Manual. During the first quarter of 2022, MCSO produced a Threshold Analysis Review Proposal which we have commented on; additionally, we requested and received a demonstration of the processes outlined in that proposal. Thereafter, we approved the proposal, but we have yet to receive an updated version of Appendix A to the EIU Operations Manual as a result.

MCSO and its data analysis vendor proposed and employed an expansion of "peer" comparisons beyond just the location of the traffic stop in the Fourth TSAR and has made modifications where necessary in the Fifth through the Seventh TSARs. MCSO matched deputies based upon personal and professional characteristics. During the analysis conducted for the Fourth TSAR, a statistical problem arose as the result of these matching characteristics. MCSO overcame this problem, and there were no additional indications of problems in the Fifth TSAR. MCSO is concluding the pilot-testing for the TSMR using these new peer comparison strategies. As a result of these experiences, MCSO also added refinements to the time and location of traffic stops that more precisely allows for comparisons of similarly situated deputies through a statistical splining procedure. MCSO continues to make progress and once all of the protocols and policies related to the TSMR are complete and fully operational, MCSO will achieve compliance with this Paragraph.

MCSO is not in compliance with this Subparagraph.

Paragraph 81.g. requires that MCSO's EIS protocols include "a process for prompt review by MCSO Commanders and Supervisors of the EIS records of all Deputies upon transfer to their supervision or command."

MCSO has noted the need for a prompt review in both the "Supervisor Responsibilities" and "Command Staff Responsibilities" sections of GH-5 (Early Identification System). EIU specifically addressed this issue during the EIS and SRELE training completed in November 2017 and updated each year thereafter. EIU advised supervisors to document when they conducted their review in Supervisor Notes, as well as how long the deputy had been working in their chain of command when the review was conducted. As noted, this was also reiterated in the SRELE training that was approved on September 30, 2019. During our visits to several Districts in 2019 and 2020, MCSO personnel informed us that most command staff attempt to review these materials within the first few days that a deputy, or supervisor, moves to their District. In no cases have we found information where the 14-day limit outlined in policy has been problematic.

MCSO is in compliance with this Subparagraph.

Paragraph 81.h. requires that MCSO's EIS protocols include "an evaluation of whether MCSO Commanders and Supervisors are appropriately using the EIS to enhance effective and ethical policing and reduce risk."

EIU has improved the processing and tracking of alert investigations. The development of Attachment B to GH-5 (Early Identification System) and training completed in EIS and SRELE has dramatically improved the information provided by supervisors when closing alerts. AIU has also created an EIS Alert Review Process inspection that specifically looks for indications that supervisors have conducted a thorough examination within policy timeframes and selected appropriate responses to the allegations included in the alert investigation. At present, this inspection is limited to reviewing whether supervisors are completing alert investigations within the 30-day policy requirements. MCSO's compliance rate for this quarterly inspection was 100%. This rate concurs with our review findings. MCSO will need to include criteria to judge the success of interventions by identifying deputies and supervisors who trigger additional alerts. This inspection will become a valuable component to ensure that supervisors and command staff are using EIS to promote efficiency and ethical policing during the alert investigation process. We will evaluate this proposal as it moves forward.

We found no issues with the conclusions used for closing alert investigations during this quarter. In fact, we have noted two instances where the interventions were beyond the normal meeting with a supervisor. In one instance the deputy met with command staff, and in another the deputy was reassigned. MCSO has created a Post-Stop Perceived Ethnicity Inspection, which looks specifically at traffic stops where the driver has a traditionally Latino surname, but the VSCF indicates a white driver. The inspectors review BWC recordings and evaluate whether the deputy correctly marked the form for the driver and any potential passengers within the vehicle stopped. MCSO reported compliance rates of 81% in July, 95% in August, and 100% in September. In July, there were two instances where deputies marked view obstructed for passengers and the BWC review indicated otherwise; and in August, there was one case where a driver with a Hispanic surname was marked as white, but the BWC review indicated otherwise. BIO Action Forms were sent to the Districts for these deficiencies.

MCSO is not in compliance with this Subparagraph.

Paragraph 81.i. requires that MCSO's EIS protocols include "mechanisms to ensure monitored and secure access to the EIS to ensure the integrity, proper use, and appropriate confidentiality of the data."

MCSO has addressed the security and integrity of data in GH-5 (Early Identification System), as well as instituted facility inspections throughout the Districts – including the security of terminals, access to information, and mobile displays. We spot-check technology and security of old forms during each site visit and have found no problems to date. Additionally, on November 6, 2017, MCSO published the operating procedure for System Log Audit Requests; this became effective on November 30, 2017. The procedure outlines how PSB personnel will notify the Technology Management Bureau of any misuse of MCSO information systems allegations and request an audit of the suspected breach. We discussed this operating procedure, BAS SOP 17-4, during our January 2018 site visit meetings; it meets all of the concerns voiced since the February 2017 discovery of two cases where data was compromised, but no one notified the Technology

Management Bureau. We believe this procedure has proven effective to this point. In addition, we are provided all internal investigation summaries initiated each month; and found only three instances in which an employee was accused of misusing ACJIS and booking information. Two of these complaints are still under investigation by PSB or are being reviewed by MCSO administration. In addition, we have approved the claim of Full and Effective Compliance with Paragraph 78 above. Nonetheless, we will continue to evaluate the effectiveness of MCSO's attention to data integrity.

MCSO is in compliance with this Subparagraph.

MCSO meets some of the requirements of Paragraph 81, but there remain a variety of activities that are currently ongoing that need to be completed before MCSO will be fully compliant. These range from the finalization of policies and protocols for the TSMR to the completion of revisions to the EIU Operations Manual. AIU has improved the tracking of alert investigations with the creation of the EIS Alert Review Process Inspection; and initiated a preliminary analysis of BIO Action Form tracking. However, each of these is limited because the EIS inspection does not evaluate the success of interventions; and without an inspection of BAFs over time (which has not yet been published), MCSO may not be adequately responding to repeated behavior that is difficult to detect with current methods. We have also requested that MCSO devise an audit for the NTCFs that have accumulated over the past several years. We and the Parties remain concerned that we have not noted many instances where supervisors proactively intervene with their subordinates; rather, the supervisors wait until prompted by EIS Alerts or the ARG review of completed alert investigations. Command staff have taken a more active role in evaluating the work of supervisors as evidenced by the number of alert investigations returned to supervisors for revision or additional inquiry. MCSO has proposed initiating an evaluation of accumulated NTCFs to examine how the forms and policy are currently being used across the agency. We approved this initial evaluation in February 2022, and we will evaluate the progression of this methodology as it becomes available. MCSO noted in its 33<sup>rd</sup> quarterly report that the NTCF initial evaluation is currently underway. To comply with this and other Paragraphs, however, the methods would also have to be able to indicate statistically whether potential bias might be occurring, with regard to how different ethnicities and races are being selected and treated during these encounters. We will continue to evaluate MCSO's progress toward the goals outlined in this Paragraph.

## Section 9: Supervision and Evaluation of Officer Performance

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### COURT ORDER X. SUPERVISION AND EVALUATIONS OF OFFICER PERFORMANCE

**Paragraph 82.** *MCSO and the County shall ensure that an adequate number of qualified first-line Supervisors are available to provide the effective supervision necessary to ensure that Deputies are following the Constitution and laws of the United States and State of Arizona, MCSO policy, and this Order. First-line Supervisors shall ensure that Deputies are policing actively and effectively, are provided with the instruction necessary to correct mistakes, and are held accountable for misconduct. To achieve these outcomes, MCSO shall undertake the following duties and measures:*

#### **a. General Duties of Supervisors**

**Paragraph 83.** *MCSO Supervisors shall provide the effective supervision necessary to direct and guide Deputies. Effective supervision requires that Supervisors: respond to the scene of certain arrests; review each field interview card and incident report; confirm the accuracy and completeness of Deputies' daily activity reports; respond to each Complaint of misconduct; ensure Deputies are working actively to engage the community and increase public trust and safety; provide counseling, redirection, support to Deputies as needed, and are held accountable for performing each of these duties.*

#### **In Full and Effective Compliance**

We conducted our October 2022 site visit remotely. We did not conduct any District visits for this assessment. Our compliance findings for this reporting period are based on the review of documentation submitted as proof of compliance.

We reviewed a sample of 71 Incident Reports for July, for the randomly selected date of July 29. Seventy of 71 Incident Reports were submitted before the end of the shift. Seventy of 71 Incident Reports were reviewed and memorialized by supervisors within the required timeframes. All 14 Arrest Reports received were reviewed and approved by supervisors within the required 72 hours. There were 11 Vehicle Crash Reports submitted in the July sample, and we verified timely supervisory review on all of them. We conducted a review of a 10% sample of the Incident Reports submitted for the date requested, to determine quality and completeness, and found no significant issues of concern. In total, 70 of 71 Incident Reports we reviewed were in compliance, for a compliance rate of 98.6%.

For July, MCSO reported a total of 151 staff hours dedicated to community policing. MCSO reported 177 occasions of community policing throughout its components, with 164 of those attributed to deputies in the Patrol function. The July report from COrD documented 32 events in which MCSO staff met with and interacted with members of different community organizations. MCSO met with representatives of drug prevention coalitions from several municipalities and neighborhoods. In addition, MCSO met with a number of community

organizations and attended several back-to-school events. From our reviews of the 18 community policing worksheets submitted for the month, Patrol deputies reported 44.5 hours of community policing, with 1,349 community members involved with those activities. MCSO reported community policing activities in Guadalupe, Sun City, Tempe, Apache Junction, and Aguila.

We reviewed a representative sample of 56 Incident Reports for August, for the randomly selected date of August 14. Of the 56 Incident Reports, all had proper documentation of timely submission and supervisory review. Of the 56 Incident Reports, six were vehicle collisions, and all had documentation of supervisory review and approval. There were 13 Arrest Reports submitted for the month, and all had proper documentation of supervisory review. The overall compliance rate for submission and review of Incident Reports in August was 100%. We conducted a review of a 10% sample of the Incident Reports submitted for the date requested, to determine quality and completeness, and noted no concerns. For August, MCSO reported a total of 437 staff hours dedicated to community policing. MCSO reported 245 occasions of community policing throughout its components, with 221 of those attributed to deputies in the Patrol function. The August report from COrD documented 30 events in which MCSO staff met with and interacted with members of several groups representing varied community interests. MCSO reported community policing activities in Buckeye, Tempe, Anthem, Peoria, Glendale, Gilbert, Chandler, Guadalupe, and Apache Junction. MCSO participated in meetings with several drug prevention groups, as well as neighborhood watch groups and homeowners' associations. In our reviews of 20 community policing worksheets, deputies reported a total of 32.1 hours of community policing, with 1,929 community members involved with those activities. These activities occurred in Mesa, Guadalupe, Sentinel, Litchfield Park, Youngtown, Tempe, Peoria, Wittman, Tonopah, Laveen and Gila Bend.

We reviewed a representative sample of 73 Incident Reports for September, for the randomly selected date of September 8. Sixty-eight of 73 Incident Reports had documentation that they had been submitted before the end of the shift, and were reviewed and approved by supervisors as required by this Paragraph. The compliance rate for September was 93.15%. All seven Vehicle Crash Reports were in compliance. Nine of 11 Arrest Reports were in compliance. Two Arrest Reports were not reviewed within the required 72 hours. We conducted a review of a 10% sample of the Incident Reports submitted to determine quality and completeness. We found no significant issues of concern. For September, MCSO reported a total of 441 staff hours dedicated to community policing. MCSO reported 258 occasions of community policing throughout its components, with 234 of those attributed to deputies in the Patrol function. The September report from COrD documented 37 events in which MCSO staff participated in community meetings and events. The activities included a September 11 tribute to fallen heroes, a Coffee With a Cop event, and a Special Olympics breakfast. There were also meetings with several drug prevention coalitions. In our reviews of Patrol Activity Log samples for September, we noted one community policing activity. For September, we reviewed 25 community policing worksheets submitted for the month. Deputies reported community policing activities in Glendale, Buckeye, Tempe, Peoria, Guadalupe, and Apache Junction. On the community policing worksheets, deputies reported 27 hours of community policing, with 2446 community members involved with those activities.

For each month of the quarter, we selected a supervisor and a squad of deputies from each District. We requested several documents, including Patrol Activity Logs (PALs), for each deputy. We reviewed PALs for each month of the quarter to assess if deputies turned them in by the end of each shift, and if supervisors reviewed each PAL.

For July, we reviewed PALs for 27 deputies and six supervisors. All 27 deputies' Patrol Activity Logs contained documentation of supervisory review. All six supervisors' Patrol Activity Logs contained documentation of command-level review. For August, we reviewed Patrol Activity Logs for 26 deputies and six supervisors. All 26 deputies' PALs contained documentation of supervisory review. All six supervisors' PALs contained documentation of command-level review. For September, we reviewed Patrol Activity Logs for 19 deputies and six supervisors. All 19 deputies' PALs contained documentation of supervisory review; all six sergeants' PALs contained documentation of command-level review.

Based on the review of PAL samples selected for 27 deputies in July, on a daily basis, deputies completed an average of .93 Incident Reports, handled an average of 4.33 calls for service, completed an average of 3.88 self-initiated calls, made an average of .04 arrests, and traveled an average of 83.85 miles. Based on the review of PAL samples selected for 26 deputies in August, on a daily basis, deputies completed an average of .31 Incident Reports, handled an average of 5.42 calls for service, completed an average of 2.46 self-initiated calls, made .16 arrests, and traveled an average of 122.08 miles. Based on the review of PAL samples selected for 19 deputies in September, on a daily basis, deputies completed an average of .63 Incident Reports, handled an average of 3.79 calls for service, completed an average of 2.89 self-initiated calls, made an average of .11 arrests, and traveled an average of 86.42 miles.

We also reviewed deputies' and supervisors' PALs to determine if supervisors provided on-scene supervision, and if those supervisor-deputy contacts were documented. For the sample dates selected in July, there were 18 supervisor-deputy field contacts reported by deputies and supervisors. For the sample dates selected in August, there were 29 supervisor-deputy field contacts reported by deputies and supervisors. For the sample dates selected in September, there were 53 supervisor-deputy field contacts reported by deputies and supervisors.

For July, August, and September we reviewed selected samples of non-traffic incidents involving stops and detentions, which were recorded on Non-Traffic Contact Forms (NTCFs). For July, we selected 16 NTCFs for review. Fourteen of the 16 NTCFs had proper documentation of timely supervisor review. The compliance rate for NTCFs in July was 87.5%. For August, we selected 16 NTCFs to review. Twelve of 16 NTCFs were in compliance with timely submission and timely supervisory review. The compliance rate in August was 75%. For September we selected 15 NTCFs for review. All 15 NTCFs were submitted prior to the end of the shift, and all 15 NTCFs were reviewed and approved by supervisors within the required timeframe. The compliance rate for timely submission and timely supervisory review of NTCFs in September was 100%. For the third quarter of 2022, the compliance rate for timely submission and timely supervisory review of NTCFs was 87.23%. MCSO will need to address this area of compliance and bring it to an acceptable level in order to maintain Full and Effective Compliance. We assess compliance with this Paragraph, as it relates to NTCFs, in conjunction with timely reviews of VSCFs, under Paragraph 90.

Our reviews for this reporting period revealed that in July, of the 16 NTCFs, 11 stops involved white individuals, with a total of 13 white individuals documented in these stops. Two stops involved Latino individuals who were contacted in separate incidents. Two stops involved two Black individuals who were contacted in separate incidents. For August, we reviewed 16 NTCFs, of which five stops involved white individuals contacted in separate incidents. Nine stops involved Latino individuals, with a total of 10 Latino individuals involved in those incidents. For September, we reviewed 15 NTCFs, of which nine stops documented white individuals; a total of 10 white individuals were involved in those incidents. Three stops involved Latino individuals who were contacted in separate incidents. One interaction involved an Asian-Pacific Islander. Four stops involved Black individuals who were contacted in separate incidents.

Our reviews of NTCFs for this quarter revealed that white individuals were involved in 31 of the 47 stops, or 65.96%. Latino individuals were involved in 15 of the 47 stops, or 31.91%. Black individuals were involved in six of the 47 stops, or 12.77%. Asian/Pacific Islanders were involved in one of the 47 stops, or 2%.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion. However, based on our reviews of documentation for the quarter, MCSO was not in compliance with timely supervisor reviews of NTCFs. NTCFs are used by deputies to document people contacts and field interviews. Timely supervisor reviews of documentation associated with field interviews are one of the primary requirements of this Paragraph. For this reporting period, MCSO was not in compliance with this Paragraph. If MCSO fails to meet the requirements of this Paragraph during the next reporting period, we will withdraw Full and Effective Compliance.

***Paragraph 84.** Within 120 days of the Effective Date, all patrol Deputies shall be assigned to a single, consistent, clearly identified Supervisor. First-line field Supervisors shall be assigned to supervise no more than twelve Deputies.*

### **In Full and Effective Compliance**

To verify Phase 2 compliance with this Paragraph, we reviewed monthly rosters and shift rosters for the third quarter of 2022. For July, we reviewed a sample of shift rosters from Districts 1, 2, and 3. For August, we reviewed a sample of shift rosters from Districts 4 and 7, and Lake Patrol. For September, we reviewed a sample of shift rosters from Districts 1, 2, and 3. Our reviews of monthly and daily rosters indicated that deputies were assigned to a single consistent supervisor, and deputies worked the same shifts as their supervisors. Our reviews of shift rosters for this quarter did not reveal any violations of this Paragraph. Additional reviews of span of control requirements are found under Paragraph 266.

On September 9, 2019, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 85.** *First-line field Supervisors shall be required to discuss individually the stops made by each Deputy they supervise with the respective Deputies no less than one time per month in order to ensure compliance with this Order. This discussion should include, at a minimum, whether the Deputy detained any individuals stopped during the preceding month, the reason for any such detention, and a discussion of any stops that at any point involved any immigration issues.*

### **In Full and Effective Compliance**

To assess MCSO's compliance with this Paragraph, we requested that MCSO provide copies of reports documenting that supervisors are meeting with and discussing individually the stops made by each deputy, at least once per month. We then requested documentation for one randomly selected supervisor from each District, for each month of the reporting period, and the squad of deputies who reports to that supervisor. Supervisors record the discussion of traffic stops by applying the "Discussed with Deputy" option. MCSO documents supervisor-deputy discussions in a spreadsheet, which it submits for inspection. The spreadsheet also documents timely supervisory review of VSCFs. In addition to the spreadsheet, MCSO submits all VSCFs for the month in review. We select a 10% random sample of VSCFs from each District to review for content. We also inspect the sample of VSCFs submitted for review of traffic stops under Paragraphs 25 and 54, as part of compliance with Paragraph 91, to verify if supervisors are addressing deficiencies in the documentation related to the stops.

Paragraph 85 requires that supervisors discuss traffic stops at least once per month with their deputies. To efficiently manage this requirement along with other administrative and operational duties, supervisors generally conduct several traffic stop-related discussions with each deputy during the month. Supervisor-deputy discussions of traffic stops that occurred toward the latter part of the month may not get reviewed until the following month. Our selections for these discussions change every month, so to obtain complete records for each deputy, MCSO holds the submission until all of the information requested for the month is complete. Accordingly, the documentation of supervisory-deputy discussions of traffic stops is submitted 30 days retroactively.

For July, MCSO submitted the June traffic stops for each deputy, by District. The total number of traffic stops for each District was: District 1, 17; District 2, 86; District 3, 21; District 4, 99; Lake Patrol, 128; and District 7, 40. There was a total of 391 traffic-related events for all Districts, and sergeants discussed all 388 of these events with the deputies who conducted them, for a compliance rate of 99.23%.

For August, MCSO submitted the July traffic stops for each deputy, by District. The total number of traffic stops for each District was: District 1, 24; District 2, 11; District 3, 41; District 4, 54; Lake Patrol, 38; and District 7, 28. There was a total of 196 traffic-related events for all Districts, and sergeants discussed 193 of these with the deputies that conducted them, for a compliance rate of 98.47%.

For September, MCSO submitted the August traffic stops for each deputy, by District. The total number of traffic stops for each District was: District 1, 12; District 2, 37; District 3, 12; District 4, 35; Lake Patrol, three; and District 7, 96. There was a total of 185 traffic-related events for all Districts, and sergeants discussed 184 of these events with the deputies who conducted them, for a compliance rate of 99.46%.

For this reporting period, there was a total of 772 traffic stops reported. We received documentation that supervisors discussed 765 of these stops with the deputies that conducted them. This is a compliance rate of 99.1%.

On October 5, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

MCSO remains in Full and Effective Compliance with this Paragraph.

***Paragraph 86.** On-duty field Supervisors shall be available throughout their shift to provide adequate on-scene field supervision to Deputies under their direct command and, as needed, to provide Supervisory assistance to other units. Supervisors shall be assigned to and shall actually work the same days and hours as the Deputies they are assigned to supervise, absent exceptional circumstances.*

#### **In Full and Effective Compliance**

To verify Phase 2 compliance with this Paragraph, we reviewed monthly rosters and shift rosters for the third quarter of 2022. For July, we reviewed a sample of shift rosters from Districts 1, 2, and 3. For August, we reviewed a sample of shift rosters from Districts 4 and 7, and Lake Patrol. For September, we reviewed a sample of shift rosters from Districts 1, 2, and 3.

MCSO deputies' and sergeants' activities are captured in Patrol Activity Logs (PALs). We selected a random sample of one day per month, and one squad per District, for review. For July, we reviewed PALs for six sergeants and 27 deputies. We noted a total of 18 field supervisor-deputy contacts between the combined deputies' and sergeants' PALs for the selected dates. For August, we requested PALs for six sergeants and 26 deputies. We received and reviewed all requested PALs, and noted a total of 29 field supervisor-deputy contacts between the combined deputies' and sergeants' PALs for the selected dates. For September, we reviewed PALs for six sergeants and 19 deputies. We noted a total of 53 field supervisor-deputy contacts between the combined deputies' and sergeants' PALs for the selected dates.

We reviewed the monthly shift rosters for each month of the reporting period. Our reviews indicate that supervisors are assigned to work the same hours as the deputies under their supervision. Our reviews of Patrol Activity Logs indicate that supervisors have been available to provide on-scene supervision.

On October 5, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 87.** *MCSO shall hold Commanders and Supervisors directly accountable for the quality and effectiveness of their supervision, including whether commanders and Supervisors identify and effectively respond to misconduct, as part of their performance evaluations and through non-disciplinary corrective action, or through the initiation of formal investigation and the disciplinary process, as appropriate.*

**Phase 1:** In compliance

- GC-4 (Employee Performance Appraisals), most recently amended on April 27, 2022.
- GC-4 (S) (Employee Performance Management), most recently amended on November 10, 2021.
- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.

**Phase 2:** Not in compliance

To assess MCSO's compliance with this Paragraph, we request the names of all deputies and supervisors whose performance appraisals were completed during the reporting period. From the lists of employees submitted, we request a representative sample. The selection of deputies and supervisors whose EPAs are requested is based on the number of requirements set forth in the First and Second Orders. There are a greater number of requirements that supervisory EPAs must address, therefore, a greater number of supervisors' EPAs are reviewed for compliance.

We requested and reviewed Employee Performance Appraisals submitted for five deputies and 10 supervisors whose EPAs were completed in July. All five deputy EPAs appropriately addressed each employee's performance for the period under review. Five of the 10 supervisor EPAs met compliance requirements for this Paragraph. All of the 10 supervisor EPAs rated the supervisors on the quality and effectiveness of their supervision. All of the 10 supervisor EPAs included comments related to the supervisors' ability to identify and respond to misconduct. Seven of the 10 supervisor EPAs addressed the requirements needed for compliance with regard to quality of supervisory reviews. Three supervisor EPAs failed to sufficiently address the quality of supervisory reviews; this was the result of the rater failing to address the requirements of Paragraphs 92 and 95.

The two noncompliant supervisor EPAs were completed by the same command officer. The reviewer stated that the employees being rated had not been the subject of any misconduct allegations, which was incorrect. Both employees had received allegations of misconduct during the rating period. Although the allegations were subsequently unfounded for both, the statements written in their EPAs were inaccurate. The rater should have noted that misconduct allegations were made and subsequent investigations unfounded the allegations.

We reviewed 10 supervisor EPAs to determine if raters had assessed each supervisor's quality of work product in misconduct investigations; for commanders, we assessed the quality of reviews of misconduct investigations, as required by Paragraph 176. We found that all 10 supervisor EPAs addressed the requirements of Paragraph 176. For July, including both deputy and supervisor EPAs, 12 of 15 EPAs, or 80% were in compliance with this Paragraph.

We requested and reviewed Employee Performance Appraisals submitted for five deputies and three supervisors whose performance evaluations were completed in August. Four of the five deputy EPAs were in compliance, and all three supervisor EPAs met Paragraph 87 requirements. We found that all three supervisor EPAs addressed the quality and effectiveness of supervision. All three supervisor EPAs included comments on the supervisors' abilities to identify and respond to misconduct. The three supervisors whose EPAs were reviewed were command personnel in specialized units; therefore, the requirements of Paragraphs 92 and 95 were not applicable. Two of the three supervisor EPAs addressed the quality of misconduct investigations, as well as reviews of misconduct investigations. The third supervisor EPA was for an Executive Chief who does not review misconduct investigations. One deputy EPA failed to list a misconduct investigation that was initiated during the review period, and also failed to list a misconduct investigation that was completed during the review period. This EPA was not in compliance. For August, including both deputy and supervisor EPAs, seven of eight EPAs, or 87.5% were in compliance with this Paragraph.

We requested and reviewed Employee Performance Appraisals submitted for five deputies and nine supervisors whose EPAs were completed in September. All five deputy EPAs sufficiently addressed all required areas of assessment, and six of the nine supervisor EPAs met the requirements of Paragraph 87. All nine supervisor EPAs appropriately rated the employees on the quality and effectiveness of their supervision. All nine supervisor EPAs included comments related to the supervisors' ability to identify and respond to misconduct. Six of the nine supervisor EPAs had required entries with regard to the quality of reviews of their subordinates' EIS profiles, as required by Paragraphs 92 and 95. The quality of supervisory reviews of subordinates' EIS profiles reflects on the overall quality of supervisory reviews as per Paragraph 100. All nine supervisor EPAs were in compliance with Paragraph 176. For September, including both deputy and supervisor EPAs, 11 of 14 EPAs were in compliance, or 78.57%.

For the third quarter of 2022, we reviewed EPAs for 15 deputies and 22 supervisors. As it pertains to the requirements of this Paragraph, 14 of the 15 deputy EPAs were in compliance and 16 of the 22 supervisor EPAs were in compliance. For this review period, 30 of 37 EPAs reviewed were in compliance with the requirements of this Paragraph, for a compliance rate of 81.1%.

#### ***b. Additional Supervisory Measures***

***Paragraph 88.*** *To ensure compliance with the terms of this Order, first-line Supervisors in any Specialized Units enforcing Immigration-Related Laws shall directly supervise the law enforcement activities of new members of the unit for one week by accompanying them in the field, and directly supervise the in-the-field-activities of all members of the unit for at least two weeks every year.*

#### **In Full and Effective Compliance**

MCSO does not have any specialized units that enforce immigration-related laws. We continue to monitor arrests and detentions as part of our review process to ensure that MCSO is in compliance with its own directives on this issue.

For this reporting period we received lists containing all incidents involving MCSO arrests and criminal citations. For each month, we requested a random sample of arrests and criminal citations. In total, we reviewed 59 incidents involving arrests and 60 incidents involving criminal citations. We also reviewed a random sample of 200 Incident Reports for this reporting period. During our reviews of the documentation provided for this reporting period, we have found no evidence to indicate any violations of this Paragraph.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 89.** A Deputy shall notify a Supervisor before initiating any immigration status investigation, as discussed in Paragraph 28. Deputies shall also notify Supervisors before effectuating an arrest following any immigration-related investigation or for an Immigration Related Crime, or for any crime related to identity fraud or lack of an identity document. The responding Supervisor shall approve or disapprove the Deputy's investigation or arrest recommendation based on the available information and conformance with MCSO policy. The Supervisor shall take appropriate action to address any deficiencies in Deputies' investigation or arrest recommendations, including releasing the subject, recommending non-disciplinary corrective action for the involved Deputy, and/or referring the incident for administrative investigation.*

### **In Full and Effective Compliance**

To assess MCSO's compliance with this Paragraph, we requested all reports related to immigration status investigations, any immigration-related crimes, or any incidents or arrests involving lack of identity documents. The Incident Reports requested were for the period in review. Any incident wherein a deputy requests a supervisor's permission to contact Immigration and Customs Enforcement (ICE) or Customs and Border Patrol (CBP) – to ascertain the legal status of an individual involved in a stop, detention, or any incident under investigation by MCSO – falls under the reporting requirements of this request.

For the third quarter of 2022, MCSO did not submit any arrests or investigations pursuant to the reporting requirements of this Paragraph.

For this reporting period, we reviewed 59 bookings and 60 criminal citations. In addition, we reviewed 200 Incident Reports for the quarter. Our reviews found no violations of this Paragraph.

On December 9, 2019, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 90.** *MCSO Deputies shall submit documentation of all stops and Investigatory Detentions conducted to their Supervisors by the end of the shift in which the action occurred. Absent exceptional circumstances, within 72 hours of receiving such documentation, a Supervisor shall independently review the information. Supervisors shall review reports and forms for Boilerplate or conclusory language, inconsistent information, lack of articulation of the legal basis for the action, or other indicia that the information in the reports or forms is not authentic or correct. Appropriate disciplinary action should be taken where Deputies routinely employ Boilerplate or conclusory language.*

**Phase 1:** In compliance

- EA-11 (Arrest Procedures), most recently amended on April 5, 2022.

**Phase 2:** In compliance

We reviewed 35 incidents involving traffic stops for July 2022. There were 14 stops related to speeding, of which seven resulted in citations and seven resulted in warnings. Eleven stops were for moving violations other than speeding. Six stops related to registration or license plate violations. Four stops were due to equipment violations. Sixteen of the stops resulted in citations, and 19 resulted in written warnings. All 35 Vehicle Stop Contact Forms we reviewed noted the serial number of the reviewing supervisor, date, and time of supervisory review. For July, MCSO submitted a spreadsheet documenting each VSCF by District, for a total of 360 VSCFs. Supervisors reviewed 357 of 360 VSCFs within 72 hours, for a compliance rate of 99.67%.

We reviewed 35 incidents involving traffic stops for August 2022. Twenty-one of the 35 traffic stops related to speeding. Of the 21 stops related to speeding, nine drivers received citations, and 12 received warnings. Three stops were due to equipment violations. Ten of the stops involved moving traffic infractions other than speeding. There was one stop for a registration violation. Of the 35 stops, 16 resulted in citations, and 19 resulted in written warnings. For August, MCSO submitted a spreadsheet documenting each VSCF by District, for a total of 117 VSCFs. Supervisors reviewed 115 of 117 VSCFs within 72 hours, for a compliance rate of 98.29%.

We reviewed 35 incidents involving traffic stops for September 2022. Seventeen of the 35 traffic stops involved speeding violations. Of the 17 stops related to speeding, nine drivers received citations and eight drivers received warnings. Seven stops involved equipment violations. Ten stops involved traffic violations other than speeding. One stop involved a registration violation. Of the 35 stops, 15 resulted in citations and 20 resulted in warnings. For September, MCSO submitted a spreadsheet documenting each VSCF by District, for a total of 294 VSCFs. We reviewed the data and supervisors reviewed 292 of 294 VSCFs within 72 hours, for a 99.32% compliance rate.

For every month of the review period, we reviewed selected samples of non-traffic incidents involving stops and detentions, which were recorded on Non-Traffic Contact Forms (NTCFs). Our assessment of compliance also included reviews of BWC recordings on selected cases, some of which included searches of the individuals detained. For July, we selected 16 NTCFs for review. All 16 NTCFs had been submitted prior to the end of the shift. Fourteen of 16 NTCFs were reviewed and approved by supervisors within 72 hours, as required. One NTCF had a rambling narrative which was difficult to follow. Two NTCFs were not reviewed within the

timeframe required. We reviewed BWC recordings submitted with three of the incidents and noted no concerns. The compliance rate for timely submission and timely supervisory review of NTCFs in July was 87.5%. For August, we selected 16 NTCFs to review. All 16 NTCFs were submitted prior to the end of the shift. Twelve of 16 NTCFs were reviewed and approved by supervisors within the required timeframe. We reviewed body-worn camera recordings associated with six cases and noted no concerns with the stops. The compliance rate for timely submission and timely supervisory review of NTCFs in August was 75%. For September, we reviewed 15 NTCFs generated during the month. All 15 NTCFs were turned in before the end of the shift, and all 15 NTCFs had supervisory reviews documented within 72 hours. We reviewed body-worn camera recordings associated with eight incidents and noted no concerns with the stops. The compliance rate for timely submission and timely supervisory review of NTCFs in September was 100%. For the third quarter of 2022, 41 of 47 NTCFs reviewed were in compliance with timely supervisory review. The overall compliance rate was 87.23%.

We take into account all stops and detentions, both traffic and non-traffic, when we determine the compliance rate for this Paragraph. For the third quarter of 2022, 764 of 771 VSCFs reviewed were in compliance with timely supervisory review. In total, 805 of 818 stops were in compliance. The compliance rate for timely reviews of all combined stops and detentions, from the samples chosen, for this reporting period was 98.41%. For this reporting period, our inspection of the documentation provided did not reveal any evidence of boilerplate or conclusory language, inconsistent or inaccurate information, or lack of articulation, as to the legal basis for stops and detentions.

***Paragraph 91.*** *As part of the Supervisory review, the Supervisor shall document any Investigatory Stops and detentions that appear unsupported by reasonable suspicion or are otherwise in violation of MCSO policy, or stops or detentions that indicate a need for corrective action or review of agency policy, strategy, tactics, or Training. The Supervisor shall take appropriate action to address all violations or deficiencies in Investigatory Stops or detentions, including recommending non-disciplinary corrective action for the involved Deputy, and/or referring the incident for administrative or criminal investigation.*

**Phase 1:** In compliance

- EA-11 (Arrest Procedures), most recently amended on April 5, 2022.
- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), most recently amended on April 27, 2022.
- GF-5 (Incident Report Guidelines), most recently amended on March 24, 2022.

**Phase 2:** In compliance

We reviewed traffic stop data reported by MCSO for its July inspection (BI2022-0101). To determine compliance with this Paragraph, for July, we randomly selected 35 traffic-related events, which BIO then audited for compliance. Of the 35 traffic-related events, MCSO reported a 98.90% compliance rate. As a result of the inspection, 11 BIO Action Forms were generated. The first deficiency was attributed to a District 1 deputy who did not provide an Incidental Contact

Form to a passenger who was questioned during the stop. The second deficiency was attributed to another District 1 deputy who did not provide an Incidental Contact Form to a passenger who was questioned during the stop. The third deficiency was attributed to a District 1 deputy who failed to list an assisting deputy on the VSCF. The fourth deficiency was attributed to a District 2 deputy who failed to complete an Assisting Deputy and Body Worn Camera Log. The fifth deficiency was attributed to a District 7 deputy who failed to activate his BWC once the decision to make a stop was made. The sixth deficiency was attributed to a Lake Patrol sergeant who failed to complete an Assisting Deputy and Body Worn Camera Log. The seventh deficiency was attributed to a Lake Patrol deputy who failed to document a seized driver's license on the VSCF. Although the deputy provided the driver with a receipt for the license, the BIO inspector noted in his report that he could not locate the license in the Property and Evidence tracking system. We consider this a serious deficiency that should have been addressed by the supervisor. The eighth deficiency was attributed to a Lake Patrol deputy who documented the wrong reason for the stop on the VSCF. The ninth deficiency was attributed to a Lake Patrol deputy who documented the wrong reason for the stop on the VSCF. The tenth deficiency was attributed to a Lake Patrol deputy who documented the wrong Patrol vehicle number and did not activate his BWC when a decision to make a stop was made. The eleventh deficiency was attributed to a Lake Patrol deputy who did not properly document the location of the stop on the VSCF. For July, 34 of the 35 stops reviewed were in compliance with this Paragraph.

We reviewed a spreadsheet documenting each VSCF by District, for July, to determine if supervisors were reviewing VSCFs within the required 72 hours. We reviewed data for 360 traffic stops and determined that supervisors had completed timely reviews of 357 of 360 VSCFs, or 99.67% of the cases. For July, we requested 16 NTCFs from the list that MCSO submitted. We reviewed the NTCFs to determine if supervisors were reviewing them within the required 72 hours. Fourteen of 16 NTCFs reviewed were in compliance with timely and quality of reviews, for a compliance rate of 87.50%.

For July, we requested a sample of 10 corrective actions generated during the month. Corrective actions are documented on BlueTeam Supervisor Notes. Two corrective actions were the result of late activation of the Body Worn Camera (BWC). One corrective action was the result of erroneous or missing information required on traffic stop documentation. Four corrective actions were the result of policy violations related to traffic stops. One corrective action was the result of a policy violation not related to a traffic stop. One corrective action was the result of a deputy performance issue. In one submission, we could not identify any deficiency or corrective action taken. For the month in review, we requested all corrective actions relative to the sample of 35 traffic stops that were selected for the monthly Traffic Stop Data Collection Inspection. There were no BlueTeam corrective actions submitted pertaining to the 35 stops selected for July.

We reviewed traffic stop data reported by MCSO for its August inspection (BI2022-0115). We randomly selected 35 traffic-related events, which BIO then audited for compliance. The inspection resulted in a 99.60% compliance rating. Our review of the inspection report found that seven stops were listed as having deficiencies, resulting in six BIO Action Forms. The first deficiency was attributed to a District 1 deputy who did not provide an Incidental Contact Form to a passenger, after obtaining driver's license information from the passenger. The second

deficiency was attributed to a District 1 deputy who incorrectly documented only one occupant in the vehicle, when the BWC recording clearly shows a passenger in the front seat. The third deficiency was attributed to a District 1 deputy who failed to conduct a license and warrants check on the driver. The fourth deficiency was attributed to a District 2 deputy who listed the driver as Hispanic on the VSCF; then listed the driver as white on the citation. The fifth deficiency was attributed to a District 2 deputy who failed to conduct a license and warrants check on the driver. The sixth deficiency was attributed to a District 7 deputy who listed the driver as Hispanic on the VSCF; then listed the driver as Black on the citation. We do not consider any of the listed deficiencies as serious violations of this Paragraph. For August, all 35 stops reviewed were in compliance with the requirements of this Paragraph.

We reviewed a spreadsheet documenting each VSCF by District, for August to determine if supervisors were reviewing VSCFs within the required 72 hours. We reviewed 117 VSCFs and determined that supervisors had completed timely reviews of documentation in 115 of the 117 stops, or in 98.29% of the cases. From the list submitted by MCSO, we requested 16 NTCFs that were generated in August. We inspected the NTCFs to determine if supervisors were reviewing them within the required 72 hours. We determined that supervisors had completed timely reviews in 12 of the 16 NTCFs, for 75% compliance.

For August, we requested a list of corrective actions. From the list submitted, we selected 10 corrective actions generated for the month. Eight corrective actions were the result of late activation, or policy violations associated with the BWC. Two corrective actions were the result of erroneous or missing information required on traffic stop documentation. For the month in review, we requested all corrective actions relative to the sample of 35 traffic stops that were selected for the monthly Traffic Stop Data Collection Inspection. There were no BlueTeam corrective action notes submitted pertaining to the 35 stops selected for August.

We reviewed traffic stop data reported by MCSO for its September inspection (BI2022-0129). We randomly selected 35 traffic-related events, which BIO then audited for compliance. The inspection resulted in a 99.06% compliance rating. Our review of the inspection report found that nine stops were listed as having deficiencies. As a result of the inspection, nine BIO Action Forms were generated. The first deficiency was attributed to a District 1 deputy incorrectly documenting the MCSO patrol vehicle number on the VSCF. The second deficiency was attributed to a District 1 deputy who incorrectly documented the location of the traffic stop on the VSCF. This deficiency should have been addressed by the reviewing supervisor. The third deficiency was attributed to a District 4 deputy who did not complete an Assisting Deputy and Body Worn Camera Log. The fourth deficiency was attributed to a District 4 deputy who documented the incorrect equipment violation as the reason for the stop. The stop was for no license plate light, but the written warning issued was for one headlight out. The fifth deficiency was attributed to a District 4 deputy who used the wrong disposition code for the traffic stop. The sixth deficiency was attributed to a District 7 who failed to provide the violator with an Incidental Contact Form. The driver was processed for DUI, but all charges were submitted to the County Attorney for review and prosecution. No citation was issued at the time of the stop. In this case, an Incidental Contact Form would have been the appropriate course of action. The seventh deficiency was attributed to a District 7 deputy who did not document an additional deputy that

was on the scene of the stop, on the VSCF. The eighth deficiency was attributed to a District 7 deputy who incorrectly documented the license plate of the violator's vehicle on the citation and VSCF. The ninth deficiency was attributed to a Lake Patrol deputy, who also incorrectly documented the license plate of the violator's vehicle on the citation and VSCF. We consider these last two deficiencies serious mistakes that should have been addressed by the reviewing supervisor. Of the 35 stops reviewed for September, 32 were in compliance with the requirements of this Paragraph.

For September, we requested a list of corrective actions. From the list submitted, we selected 10 corrective actions that were generated for the month. All corrective actions were for policy or procedure violations during traffic stops. Most were for minor infractions, such as failing to provide a self-introduction. For the month in review, we requested all corrective actions relative to the sample of 35 traffic stops that were selected for the monthly Traffic Stop Data Collection inspection. There were no documented corrective actions pertaining to any of the 35 stops selected for September.

We reviewed a spreadsheet documenting each VSCF by District. For September, we reviewed 294 VSCFs and determined that supervisors had completed timely reviews in 292 of the 294 VSCFs, or in 99.32% of the cases. For September we requested 15 NTCFs generated by Patrol deputies. We reviewed all 15 NTCFs to determine if supervisors were reviewing NTCFs within the required 72 hours. We determined that supervisors had completed timely reviews in all 15 NTCFs. This is a compliance rate of 100%.

Paragraph 90 requires timely supervisory reviews of documentation pertaining to stops and detentions. Paragraph 91 requires supervisors to identify policy violations, deficiencies, and training issues noted in stops and detentions. Of the sample of 105 stops inspected for this reporting period, there was one stop in July, and three stops in September, that had serious deficiencies or policy violations that supervisors failed to address. The compliance rate for Paragraph 91 for this reporting period was 96.19%.

***Paragraph 92.*** *Supervisors shall use EIS to track each subordinate's violations or deficiencies in Investigatory Stops or detentions and the corrective actions taken, in order to identify Deputies needing repeated corrective action. Supervisors shall notify IA. The Supervisor shall ensure that each violation or deficiency is documented in the Deputy's performance evaluations. The quality and completeness of these Supervisory reviews shall be taken into account in the Supervisor's own performance evaluations. MCSO shall take appropriate corrective or disciplinary action against Supervisors who fail to conduct complete, thorough, and accurate reviews of Deputies' stops and Investigatory Detentions.*

**Phase 1:** In compliance

- GC-4 (Employee Performance Appraisals), most recently amended on April 27, 2022.
- GC-4 (S) (Employee Performance Management), most recently amended on November 10, 2021.

**Phase 2:** Not in compliance

To determine compliance, we will review the EIS and IAPro histories for each of the employees whose EPAs were selected for review under Paragraph 87. We will then review the information to determine if all violations, deficiencies, PSB investigations, and corrective actions taken pertaining to stops and detentions, which were listed in the employee's EIS and IAPro resumes, were accurately documented in the employee's EPA. Failure to identify and memorialize any issues and actions taken as noted in the employee's EIS and IAPro resumes, reflects on the quality of the supervisor's reviews. By reviewing EIS and IAPro resumes, we will also be able to identify if a deputy has repeated entries of any specific violations, and if subsequent actions taken to correct the issue have been documented in the employee's EPA. For applicable supervisors' EPAs, in addition to the above metric, we will review comments made in reference to the quality of supervisory reviews to ensure that the rater has specific comments addressing this Paragraph's requirements. Both of these requirements must be met for compliance. Deficiencies in quality of EIS reviews, by supervisors, will also reflect in our assessment of compliance for Paragraph 100. To ensure fairness to the agency, when we assess compliance with this Paragraph, we also look at the performance appraisal as a whole to determine if the intent and spirit of the Paragraph under review was captured.

For July, we reviewed five deputy EPAs and 10 supervisor EPAs. All five deputy EPAs reviewed were in compliance, and seven of the 10 supervisor EPAs were in compliance. Three first-line supervisor EPAs did not have specific comments addressing EIS reviews, as it pertains to the requirements of this Paragraph. For August, we reviewed five deputy EPAs and three supervisor EPAs. All five deputy EPAs were in compliance, and the three supervisor EPAs reviewed were for commanders not assigned to Patrol; therefore, the requirements were not applicable. All EPAs reviewed for August were in compliance with this Paragraph. For September, we reviewed five deputy EPAs and nine supervisor EPAs. All five deputy EPAs were in compliance. Six of the nine supervisor EPAs addressed the quality and completeness of EIS reviews, which are requirements of this Paragraph. Three first-line supervisor EPAs did not have specific comments addressing the quality and completeness of EIS reviews.

For this quarter, all 15 deputy EPAs reviewed were in compliance with this Paragraph, for a 100% compliance rate. Of the 22 supervisor EPAs reviewed, 16 or 72.73% were in compliance. Including deputy and supervisor EPAs, there was a total of 37 EPAs, of which 31 met the requirements of this Paragraph. The compliance rate for this reporting period was 83.78%. For the third quarter of 2022, MCSO was not in compliance with the requirements of this Paragraph.

**Paragraph 93.** *Absent extraordinary circumstances, MCSO Deputies shall complete all incident reports before the end of shift. MCSO field Supervisors shall review incident reports and shall memorialize their review of incident reports within 72 hours of an arrest, absent exceptional circumstances.*

### **In Full and Effective Compliance**

We reviewed a representative sample of 71 Incident Reports for July, for the randomly selected date of July 29. Of the 71 Incident Reports, we verified documentation of timely supervisory review on 70 reports. Of the 71 Incident Reports, 11 were vehicle collisions. Of the 11 Vehicle Crash Reports, all had documentation that a supervisor had reviewed and approved the reports. The compliance rate for timely supervisory review of Incident Reports in July was 98.59%. We reviewed a 10% sample of the Incident Reports submitted for quality. We did not find any issues of concern. All 14 Arrest Reports reviewed were in compliance.

We reviewed a sample of 56 Incident Reports for August, for the randomly selected date of August 14. All 56 reports were in compliance. There were 13 arrests submitted for review and all Arrest Reports were reviewed within 72 hours. There were six Vehicle Crash Reports submitted in the sample for August, of which all included documentation of supervisory review. The compliance rate for timely submission and review of Incident Reports for August was 100%. We conducted a quality review on a 10% random sample of the reports we reviewed. We found no issues of concern.

We reviewed a representative sample of 73 Incident Reports for September, for the randomly selected date of September 8. Sixty-eight of the 73 Incident Reports were in compliance. Two Arrest Reports were not reviewed within the required 72 hours, and there were three incidents for which we only received CAD printouts. The compliance rate for September was 93.15%. There were 11 Arrest Reports, of which nine had been reviewed and approved by supervisors within the required 72 hours. There were seven Vehicle Crash Reports submitted in the September sample; we confirmed timely supervisory review on all seven crash reports. We conducted a quality review on a 10% random sample of the reports submitted and found no issues of concern. For the quarter, 194 of 200 reports, or 97%, were in compliance.

On March 17, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 94.** *As part of the Supervisory review, the Supervisor shall document any arrests that are unsupported by probable cause or are otherwise in violation of MCSO policy, or that indicate a need for corrective action or review of agency policy, strategy, tactics, or Training. The Supervisor shall take appropriate action to address violations or deficiencies in making arrests, including notification of prosecuting authorities, recommending non-disciplinary corrective action for the involved Deputy, and/or referring the incident for administrative or criminal investigation.*

**Phase 1:** In compliance

- EA-11 (Arrest Procedures), most recently amended on April 5, 2022.
- GF-5 (Incident Report Guidelines), most recently amended on March 24, 2022.

**Phase 2:** In compliance

To assess compliance with this Paragraph, we will request a list of bookings and criminal citations for the period in review. We will randomly select a sample of 20 bookings and 20 criminal citations, which BIO will then inspect for compliance. In addition, MCSO will review all cases involving immigration arrests, and arrests related to lack of identity documents. MCSO will also review all Maricopa County Attorney's Office (MCAO) turndowns for lack of probable cause and submit those for our review. The total of cases selected per month will not exceed 60. We will review Incident Report Inspection reports as part of the documentation to determine compliance with Paragraphs 94 and 96. The BIO inspection will review the selected cases, which are retroactive two months. We review the Incident Report Inspection Report and its corresponding Inspection Matrix for each month of the reporting period. Some inspection points in the matrix are given stronger consideration in our reviews than others, as these are fundamental requirements of Paragraph 94; if deficiencies are noted, they may also impact the successful conclusion of the case. In all the cases described below, we relied on the BIO inspector's notations and observations to determine our findings.

In addition to documentation described above, we review all Incident Memorialization Forms (IMFs) submitted for the quarter. The Incident Memorialization Form is used by supervisors to document deficient arrests and corrective actions taken. In accordance with this Paragraph and MCSO policy, supervisors are required to document arrests that are unsupported by probable cause or are otherwise in violation of MCSO policy, or that indicate a need for corrective action or review of agency policy, strategy, tactics, or Training. The supervisor generating the IMF, and the commander reviewing the IMF, should ensure that the documentation includes the corrective action taken to resolve issues caused by the deficiency, as well as the remedial action taken to prevent future reoccurrence.

For July, we reviewed the June Incident Report Inspection (BI2022-0079). We selected 20 bookings and 20 criminal citations, which BIO then inspected for compliance. MCSO did not submit any immigration-related arrests, cases involving identity theft investigations, or County Attorney turndowns for lack of probable cause. The inspection resulted in a 98.68% compliance rating. The BIO Inspection Report noted deficiencies in five cases, which resulted in six BIO Action Forms. As a result of our review of all the documentation submitted, including the matrix, we determined that three cases had serious deficiencies that should have been addressed by first-

line supervisors, and therefore were not in compliance with this Paragraph. Two cases had minor deficiencies that would not affect compliance. The first and second deficiencies were both arrests from District 1 where the Arrest Reports were not reviewed by a supervisor within the required 72 hours. The third deficiency involved a District 1 arrest where the Arrest Report lacked articulation of probable cause to support a criminal traffic charge; we consider this case noncompliant. The fourth deficiency involved a Lake Patrol criminal citation that lacked articulation of probable cause that a watercraft was operating in excess speed; we consider this case noncompliant. The fifth deficiency involved a Lake Patrol criminal citation where the report was not submitted before the end of the shift and not reviewed by a supervisor within 72 hours. However, the inspection matrix noted that the report did not contain all the elements of the crime. The deputy articulated reasons to submit felony DUI charges, but only cited the individual for misdemeanors. We consider this case noncompliant. It is likely that the late submission and late supervisor review contributed to this deficiency not being addressed and corrected before submittal. In total, we reviewed 39 cases of which 36 were in compliance.

For August, we reviewed the July Incident Report Inspection (BI2022-0097). We selected 20 bookings and 20 criminal citations, which BIO then inspected for compliance. As a result of a case that was erroneously selected twice, there was a total of 39 reports inspected for compliance. There were no immigration-related arrests, and no cases involving identity theft investigations reported by MCSO. There were no County Attorney turndowns for lack of probable cause. The inspection resulted in a 99.88% compliance rating. We reviewed the inspection report, which noted one deficient case, and reviewed the matrix used by BIO for the inspection. The deficient case involved a sergeant from Lake Patrol who seized a driver's license but did not issue a receipt for the seized license. The Inspection Matrix noted that the evidence was not processed and documented as per MCSO policy. Considering past concerns with improperly seized identification documents during traffic stops, as well as improper storage of evidence, we consider this case as being non-compliant with the requirements of this Paragraph. For August, 39 of 40 cases were in compliance.

For September, we reviewed the August Incident Report Inspection (BI2022-0111). We selected 20 bookings and 20 criminal citations, which BIO then inspected for compliance. There were no immigration-related arrests, and no cases involving identity theft investigations reported by MCSO. There were no County Attorney turndowns for lack of probable cause. The inspection resulted in a 99.61% compliance rating. We reviewed the inspection report, which noted three deficient cases, and reviewed the matrix used by BIO for the inspection. As a result of our review of all the documentation submitted, including the matrix, we determined that one case had a minor deficiency, and two cases were noncompliant. The first deficiency was attributed to a District 4 arrest where the deputy seized a driver's license but did not issue a receipt for the license. The Inspection Matrix noted that the evidence was not processed and documented as per MCSO policy. As noted in our July Incident Inspection Report review, we consider this a serious issue that should have been addressed by the first-line supervisor; this case was noncompliant. The second deficiency was attributed to a Lake Patrol deputy who failed to submit the arrest report prior to the end of his shift. The Inspection Matrix states that a subject was issued a criminal citation; however, there was no incident report made and the probable cause was not documented on the citation. This case was noncompliant. The third deficiency was attributed to a Special

Investigations supervisor who did not review the arrest report within the required 72 hours. We consider this deficiency as minor, as the late review in this case would not affect the outcome of the arrest. For September, 38 of 40 cases reviewed were in compliance with this Paragraph.

For this quarter, of the total 119 cases selected for review, 113 were in compliance. In addition, we reviewed 11 Incident Memorialization Forms (IMFs). Of the 11 IMFs, we found that seven were in compliance. For the quarter, we reviewed 119 arrests and 11 IMFs, for a total of 130 cases. Of the 130 cases, we found that 120 were in compliance, or 92.31%. MCSO has been in compliance with this Paragraph. Therefore, we will issue a warning. If MCSO fails to meet the requirements of this Paragraph in the next quarter, compliance will be withdrawn.

***Paragraph 95.*** *Supervisors shall use EIS to track each subordinate's violations or deficiencies in the arrests and the corrective actions taken, in order to identify Deputies needing repeated corrective action. The Supervisor shall ensure that each violation or deficiency is noted in the Deputy's performance evaluations. The quality of these supervisory reviews shall be taken into account in the Supervisor's own performance evaluations, promotions, or internal transfers. MCSO shall take appropriate corrective or disciplinary action against Supervisors who fail to conduct reviews of adequate and consistent quality.*

**Phase 1:** In compliance

- GC-4 (Employee Performance Appraisals), most recently amended on April 27, 2022.
- GC-4 (S) (Employee Performance Management), most recently amended on November 10, 2021.

**Phase 2:** Not in compliance

There are two primary areas of assessment for this Paragraph. The first is to determine if supervisors are tracking subordinates' deficiencies and violations in arrests, and accurately documenting these issues along with corrective actions in employees' EPAs. In addition, repeated corrective actions should be addressed in EPAs. The second is to determine if the quality of supervisory reviews of EIS are being addressed in supervisors' EPAs. The quality and effectiveness of interventions, as a result of deficiencies pertaining to stops and detentions, is a requirement which we assess under Paragraph 97.

To determine compliance, we will review the EIS and IAPro histories for each of the employees whose EPAs were selected for review under Paragraph 87. We will then review the information to determine if all violations, deficiencies, IA investigations, and corrective actions taken pertaining to arrests, which were listed in the employee's EIS and IAPro resumes, were accurately documented in the employee's EPA. Failure to identify and memorialize any issues and actions taken as noted in the employee's EIS and IAPro resumes, reflects on the quality of the supervisor's quality of reviews. By reviewing EIS and IAPro resumes, we will also be able to identify if a deputy has repeated entries of any specific violations, and if subsequent actions taken to correct the issue have been documented in the employee's EPA. For applicable supervisors' EPAs, in addition to the above metric, we will review comments made in reference to the quality of supervisory reviews to ensure that the rater has specific comments addressing this Paragraph's

requirements. Both of these requirements must be met for compliance. Deficiencies in quality of EIS reviews by supervisors will also reflect in our assessment of compliance for Paragraph 100. To ensure fairness to the agency, when we assess compliance with this Paragraph, we also try look at the performance appraisal as a whole to determine if the intent and spirit of the Paragraph under review was captured.

For this quarter, we reviewed 15 deputy EPAs and 22 supervisor EPAs. All 15 deputy EPAs we reviewed, or 100%, were in compliance with this Paragraph. Sixteen of the 22 supervisor EPAs we reviewed, or 72.72%, were in compliance with this Paragraph. Six supervisor EPAs failed to note specific comments addressing the quality of EIS reviews, as it pertains to the requirements of this Paragraph. Including deputy and supervisor EPAs, there was a total of 37 EPAs, of which 31 met the requirements of this Paragraph. The compliance rate for this reporting period was 83.78%. For the period in review, MCSO was not in compliance with the requirements of this Paragraph.

***Paragraph 96.*** *A command-level official shall review, in writing, all Supervisory reviews related to arrests that are unsupported by probable cause or are otherwise in violation of MCSO policy, or that indicate a need for corrective action or review of agency policy, strategy, tactics, or Training. The commander's review shall be completed within 14 days of receiving the document reporting the event. The commander shall evaluate the corrective action and recommendations in the Supervisor's written report and ensure that all appropriate corrective action is taken.*

**Phase 1:** In compliance

- EA-11 (Arrest Procedures), most recently amended on April 5, 2022.

**Phase 2:** In compliance

This Paragraph requires that a command-level official review a supervisor's investigation of the circumstances pertaining to any arrest that lacks probable cause, is in violation of policy, or where there is a need for corrective action or review of the agency's policy, strategy, tactics, or training. This Paragraph also requires that the commander evaluate the corrective action and recommendations to ensure that these are appropriate.

Our reviews to determine compliance with this Paragraph are associated with the documentation provided for Paragraph 94. If BIO identifies deficient cases in the Incident Report inspection, and the deficiencies fall within any of the four areas noted in Paragraphs 94 and 96, we will review the documentation to determine compliance. Since this Paragraph pertains to command reviews of supervisory investigations of deficient arrests, we will also review Incident Memorialization Forms to determine compliance. Our reviews for compliance with this Paragraph are determined by the command staff's timely reviews of IMFs, once submitted by supervisors, and commanders' evaluation of the corrective actions taken.

We reviewed 11 Incident Memorialization Forms (IMFs) submitted for this quarter. Our reviews determined that seven of the 11 IMFs were in compliance with the requirements of this Paragraph. Noted below is a brief summary of each case.

The first IMF was generated for an incident that occurred in 2018. There was no specific date documented for the incident. This case involved the arrest of a juvenile for domestic violence. The incident report was not included, so we were unable learn the specific circumstances of the arrest. The IMF was a result of the County Attorney declining prosecution on this arrest. The commander who authored the IMF noted that the reviewing supervisor failed to note major deficiencies with the investigation and approved the arrest report. The deputy was no longer an MCSO employee at the time the IMF was generated, so there was no remedial action taken on the deputy. The commander noted that he met with the supervisor to discuss the incident, but the supervisor was not receptive to the conversation and did not take ownership of his mistake. This is concerning. This IMF was generated for a faulty arrest made four years ago, so the timeliness of any remedial action taken on the deputy, had it occurred, would have been four years after the incident. The IMF did not include relevant documents, and there was no indication that the supervisor who approved the deficient report learned from his mistake. This IMF was not in compliance.

The second IMF was generated for an incident that occurred on August 14, 2022, involving a welfare check of a motorist who was asleep in a vehicle. This IMF listed a deputy and a sergeant as the involved employees. The deputy responded and observed what he believed was drug paraphernalia inside the vehicle. The deputy removed the driver from the vehicle, searched him, and found a pen he believed was drug paraphernalia. The driver admitted that the pen was used for smoking drugs. The deputy released the driver and advised him he would be submitting charges to the County Attorney. The arrest submittal was approved by the deputy's supervisor. Upon review, a commander found that the deputy had not seized or impounded the evidence, and that the deputy conducted an unlawful search. The commander concluded that this was an unlawful arrest. The arrest submittal was retracted, and the incident was handled as a supervisor intervention, with a BlueTeam entry. A supervisor note was also entered for the supervisor who approved the faulty report. This incident was handled correctly and in a timely manner. This IMF was in compliance.

The third IMF was generated for the same incident discussed above in the second IMF, with only the deputy named as the involved employee. The two IMFs were generated for the same arrest. It appears that one IMF issued for the deputy and the other IMF issued for the sergeant. This IMF was in compliance.

The fourth IMF was generated for a domestic violence arrest made on June 5, 2021. The reviewing commander's report indicated that there was no evidence of a physical assault, and the violation was limited to an incomprehensible profane outburst by a suspect who had been diagnosed with schizophrenia, and was also under the influence of narcotics. The suspect was issued a citation in lieu of detention and was subsequently provided with mental health care. The reviewing commander noted that the report was poorly written, did not properly document the subject's actions, and did not articulate probable cause. None of the involved parties were willing to aid prosecution. The deputy was killed in the line of duty, so no corrective action was taken. Our concern was that there was no mention of any remedial action taken on the supervisor who approved the faulty arrest report. This IMF was not in compliance.

The fifth IMF was generated for an arrest made on May 15, 2021. This case was turned down for prosecution. This was an arrest for disorderly conduct, where charges were submitted to the County Attorney for prosecution. The supervisor who reviewed the County Attorney rejection wrote that he could not identify probable cause for the charges submitted. The supervisor documented that he met with the deputy to explain the mistake and advised the deputy that in the future, if he had any questions, to contact a supervisor. Corrective action was documented for the deputy. However, a supervisor initially reviewed and approved this deficient report, and there was no documented corrective action for the supervisor. This IMF was not in compliance.

The sixth IMF was generated for an arrest made on August 16, 2022. This was an incident involving a dispute between neighbors. Due to time constraints, the reviewing supervisor allowed the deputy to complete the report on his next shift. When the report was finally submitted, the supervisor determined that the deputy had no legal basis to enter the premises, and no legal basis to search for people inside the premises. In his summary, the supervisor noted that the report lacked articulation for the basis of the deputy's actions. In addition, the deputy removed paperwork from the property and did not impound the evidence in the Property and Evidence Unit. The supervisor met with and discussed the deficiencies with the deputy. The failure to properly document and impound evidence was referred to PSB. This case was documented and reviewed within the required timeframe. This IMF was in compliance.

The seventh IMF was generated for an arrest made on December 5, 2021. This IMF was completed by a commander to memorialize a faulty review by a supervisor, of an arrest involving a domestic violence assault. This case started as a County Attorney turndown for prosecution. During a review of the case, after it was rejected by the County Attorney, a supervisor noted that the report had several discrepancies, deficiencies, and was poorly written. The commander met with the supervisor to discuss these concerns. The commander wrote that the supervisor understood his mistakes and was receptive. The commander also met with the deputy to discuss these deficiencies. The deputy was instructed to resubmit aggravated assault charges on the primary aggressor. This IMF was in compliance.

The eighth IMF was generated by a supervisor who was monitoring the radio and responded to the scene of an arrest on June 15, 2022. The incident involved a possible burglary. An FTO and a deputy in training responded to the call. The suspect was detained some distance away from the scene of the possible burglary. The suspect was handcuffed and searched, and a knife was found on his person. The subject was then transported back to the scene of the attempted burglary. The supervisor who responded determined that there was no probable cause for the arrest and directed deputies to conduct an interview with the suspect. The subject did not admit to any crime. The subject was then issued a trespass warning and released. The supervisor met with the deputy in training to discuss the improper search and the fact that the subject should not have been transported back to the scene of the call, since he had only been detained and not arrested. The FTO's deficiencies were documented in a BlueTeam supervisor note. This IMF was in compliance.

The ninth IMF was generated by a commander to memorialize a deficient arrest report from December 5, 2021, which resulted in a County Attorney turndown. This arrest report was not properly reviewed and corrected by the deputy's supervisor. This case involved a domestic violence assault, and is the same incident previously discussed in the seventh IMF. During a review of the case, after it was rejected by the County Attorney, a supervisor noted that the report had several discrepancies, deficiencies, and was poorly written. The deficiencies were discussed with the deputy, and he was instructed to resubmit aggravated assault charges on the primary aggressor. The deficiencies were also discussed with the supervisor who approved the report. This IMF was in compliance.

The tenth IMF was generated for an arrest made on July 4, 2022, for a warrant issued by another county. The arresting deputy saw the subject on the street and took him into custody. A records check revealed a warrant for a person with the same name as the subject. The subject did not have any identification on his person when he was booked. A subsequent inquiry revealed that the warrant was for a different subject with the same name, but a different date of birth. The error was found when booking photos of the person taken into custody confirmed that this individual had a different date of birth than that of the person named on the warrant. The subject was subsequently released from custody. A supervisor met with the deputy to discuss the errors made with this arrest. This incident was handled appropriately. This IMF was in compliance.

The eleventh IMF was generated for a DUI arrest made on September 10, 2022, in which the driver was charged with several offenses. The supervisor who reviewed the arrest report noted that one of the statutes the defendant was charged with did not apply. The subject was charged with carrying a deadly weapon, but the deputy had failed to ask the driver if she was carrying a weapon. In accordance with the statute, if the driver denies he or she is in possession of a weapon, and one is found, the driver may be charged with the violation. In this case, the requirements of the statute were not met. The supervisor met with the deputy and discussed the deficiencies, and instructed the deputy to petition the court to remove the charge. This IMF was in compliance.

As a result of MCSO not submitting any proof of compliance with this Paragraph in the last quarter, we deferred our Phase 2 compliance findings in our last quarterly status report. Based on our reviews of the documentation submitted for this quarter, seven of 11 IMFs were in compliance, for a compliance rate of 63.64%. This compliance rate is not enough to meet the requirements of this Paragraph. MCSO was previously in compliance with this Paragraph; therefore, we will issue a warning. If MCSO fails to meet the requirements of this Paragraph in the next quarter, compliance will be withdrawn.

**Paragraph 97.** *MCSO Commanders and Supervisors shall periodically review the EIS reports and information, and initiate, implement, or assess the effectiveness of interventions for individual Deputies, Supervisors, and units based on that review. The obligations of MCSO Commanders and Supervisors in that regard are described above in Paragraphs 81(c)–(h).*

**Phase 1:** In compliance

- GH-5 (Early Identification System), most recently amended on December 16, 2021.

**Phase 2:** Not in compliance

As per GH-5 (Early Identification System) and GB-2 (Command Responsibility), supervisors are required to conduct EIS reviews twice per month for sworn members. Command review of EIS profiles of supervisory and command personnel began in February 2017. To assess MCSO's compliance with this Paragraph, for every month of the reporting period, we selected a supervisor and a squad of deputies from each District. We then reviewed the documentation provided as verification of compliance with this Paragraph. We also requested that EIS reviews of the commanders responsible for the selected personnel be included. The purpose of conducting EIS reviews is for supervisors to oversee the performance of subordinates, and take appropriate action on issues that need to be corrected. This Paragraph also requires that the effectiveness of interventions be evaluated. EIS reviews should be thorough, and completed in a timeframe that allows supervisors to monitor performance and address any concerns noted, in a timely manner. We believe that periodic EIS reviews should be conducted on a schedule that maximizes their usefulness. We understand that an exact 14-day timeframe may not be possible for all EIS reviews; and we will therefore conduct our reviews using a standard of reasonableness. Two EIS reviews conducted within a short time period, on the same employee, lead to questions regarding the purpose and quality of the reviews. EIS reviews conducted too close to each other do not address the intent of this Paragraph. We will review documentation to determine if EIS reviews are being conducted in accordance with the requirements of this Paragraph, or if they are being conducted perfunctorily without regard for usefulness or quality.

For July, we reviewed the documentation provided for 49 employees – which included the ranks of deputy, sergeant, lieutenant, and captain. Of the 49 employees, all had documentation that met compliance requirements. For August, we reviewed Supervisor Notes requested as verification of compliance for 47 employees, for a compliance rate of 100%. Of the 47 selected employees, 46 had appropriate documentation of timely EIS reviews, for a compliance rate of 97.87%. One employee had only one EIS review during the month. For September, we received Supervisor Notes as verification of compliance of EIS reviews for the selected 48 employees. Of the 48 employees, 46 had appropriate documentation of compliance with this Paragraph, for a compliance rate of 95.83%. Two employees did not have documentation of the two required EIS reviews. In total, for the quarter, we reviewed Supervisor Notes for 144 employees, of which 141 had proper documentation. The compliance rate for the quarter, for periodic supervisory and command EIS reviews, was 97.92%. We note that MCSO continues to develop the supervisory review process that is part of the TSMR pilot program, and guiding documents and training documentation were completed and approved in the third quarter. However, MCSO must publish these documents for the pilot to be fully complete. The reviews of broader pattern-based reports, as required by Paragraph 81.c., and assessments of interventions as required by this Paragraph,

have not been sufficiently documented to meet compliance with this Paragraph. For this reporting period, MCSO was not in compliance.

***d. Regular Employee Performance Review and Evaluations***

***Paragraph 98.*** *MCSO, in consultation with the Monitor, shall create a system for regular employee performance evaluations that, among other things, track each officer's past performance to determine whether the officer has demonstrated a pattern of behavior prohibited by MCSO policy or this Order.*

**Phase 1:** In compliance

- GC-4 (Employee Performance Appraisals), most recently amended on April 27, 2022.
- GC-4 (S) (Employee Performance Management), most recently amended on November 10, 2021.

**Phase 2:** Not in compliance

To assess compliance with this Paragraph, we review a sample of deputy and supervisor EPAs selected on a monthly basis under Paragraph 87. There are several Paragraphs in the First and Second Orders that have requirements pertaining to the assessment and documentation of performance in Employee Performance Appraisals. Supervisors are also required to identify and track the performance of deputies who have patterns of behavior prohibited by the Order and MCSO policy. The methodologies for the assessment of compliance with Paragraphs that are related to EPAs are explained under each of those Paragraphs.

We reviewed a total of 37 EPAs for the third quarter of 2022. Thirty of the 37 EPAs met compliance requirements. Supervisor EPAs have a greater number of requirements that must be met, and we generally find more deficiencies in these. We have previously stated that there are several EPA related Paragraphs, and a deficiency in one Paragraph can affect compliance with another Paragraph. During our October site visit, we reminded MCSO that supervisors are not consistently addressing the requirements of Paragraphs 92 and 95. This failure directly impacts the quality of reviews, as required by Paragraph 100. We also continue to review EPAs where raters fail to take into account misconduct investigations that were initiated or closed during the employee's EPA period. For misconduct investigations initiated during the review period, we expect those to be listed in the EPA. For misconduct investigations closed during the review period, we expect that these, along with the findings and discipline, if any, be documented in the EPA. For the period in review, MCSO was not in compliance with this Paragraph.

**Paragraph 99.** *The review shall take into consideration all past Complaint investigations; the results of all investigations; Discipline, if any, resulting from the investigation; citizen Complaints and commendation; awards; civil or administrative claims and lawsuits related to MCSO operations; Training history; assignment and rank history; and past Supervisory actions taken pursuant to the early warning protocol.*

**Phase 1:** In compliance

- GC-4 (Employee Performance Appraisals), most recently amended on April 27, 2022.
- GC-4 (S) (Employee Performance Management), most recently amended on November 10, 2021.

**Phase 2:** Not in compliance

The current EPA has an acknowledgement at the conclusion that supervisors are required to sign, to affirm that they have done due diligence in researching and documenting the employee's history for the review period, as it pertains to the requirements of Paragraph 99. Supervisors completing EPAs are required to document their findings relevant to these areas, if their reviews reveal any applicable events or actions. The areas of review include: complaint investigations and dispositions; discipline; citizen complaints; commendations; awards; civil or administrative claims; and past supervisory actions taken pursuant to EIS Alerts. We do not rely solely on the supervisor's affirmation that a thorough review was completed. We verify supporting documentation to ensure the supervisor has conducted a thorough review and that the information provided under Paragraph 99 is accurate. We review EIS and IAPro resumes for each employee whose EPA we received during the quarter, under Paragraphs 87, 92, and 95. We review these resumes and compare them to the notations listed by the supervisor authoring the EPA, under Paragraph 99. We verify that any past actions noted in the resumes are captured in the EPA. We have emphasized to MCSO the importance of accurate documentation and thorough reviews of EIS profiles.

For this reporting period, we reviewed Employee Performance Appraisals for 15 deputies and 22 supervisors. For July, we found all five deputy EPAs, and seven of the 10 supervisor EPAs in compliance. Three supervisor EPAs failed to document misconduct investigations that were initiated during the review period. For August, four of five deputy EPAs were in compliance, and all three supervisor EPAs in compliance. One deputy EPA failed to document a misconduct investigation initiated during the review period. For September, all five deputy EPAs were in compliance, and eight of the nine supervisor EPAs were in compliance. One supervisor EPA failed to document a misconduct investigation initiated during the review period. Of the total 37 EPAs reviewed for this quarter, 33 met the requirements of this Paragraph, for a compliance rate of 89.19%. For the third quarter of 2022, MCSO was not in compliance with the requirements of this Paragraph.

**Paragraph 100.** *The quality of Supervisory reviews shall be taken into account in the Supervisor's own performance evaluations.*

**Phase 1:** In compliance

- GC-4 (Employee Performance Appraisals), most recently amended on April 27, 2022.
- GC-4 (S) (Employee Performance Management), most recently amended on November 10, 2021.

**Phase 2:** Not in compliance

The current EPA form has a rating dimension where supervisors are required to document the quality of supervisory reviews and supervisor accountability. This Paragraph only pertains to supervisor EPAs, and we review comments to ensure that the rater has addressed all areas associated with the quality of supervisory reviews. We have previously noted that we take into account the requirements of Paragraphs 92 and 95, as it pertains to the quality of supervisory reviews of EIS. The quality of reviews of supervisors' misconduct investigations, as per Paragraph 176, is also figured into the assessment of compliance for this Paragraph.

We reviewed Employee Performance Appraisals for 22 supervisors and commanders who received EPAs during this reporting period. For July, three of the 10 supervisor EPAs failed to specifically and sufficiently document the requirements of Paragraphs 92 and 95, which require supervisors to review and track violations and corrective actions in EIS. For August, all three supervisor EPAs were in compliance with the requirements of Paragraphs 92 and 95. For September, three of the nine EPAs failed to specifically and sufficiently document the requirements of Paragraphs 92 and 95. Of the 22 supervisor EPAs reviewed for this quarter, 16 were in compliance with the requirements of this Paragraph, or 72.73%. For this reporting period, MCSO was not in compliance with the requirements of this Paragraph.

**Paragraph 101.** *Within 180 days of the Effective Date, MCSO shall develop and implement eligibility criteria for assignment to Specialized Units enforcing Immigration-Related Laws. Such criteria and procedures shall emphasize the individual's integrity, good judgment, and demonstrated capacity to carry out the mission of each Specialized Unit in a constitutional, lawful, and bias-free manner. Deputies assigned to a Specialized Unit who are unable to maintain eligibility shall be immediately re-assigned.*

**In Full and Effective Compliance**

MCSO does not have any specialized units that enforce immigration-related laws. Therefore, by default, MCSO is in Phase 2 compliance with this Paragraph. We continue to monitor arrests and detentions as part of our review process to ensure that MCSO is in compliance with its own directives on this issue.

For July, August, and September, we received lists containing all incidents involving MCSO arrests and criminal citations. For each month, we requested a random sample of arrests and criminal citations. In total, we reviewed 59 incidents involving arrests and 60 incidents involving criminal citations. We also reviewed a random sample of 200 Incident Reports for this reporting period. During our reviews of the documentation provided for this reporting period, we found no evidence to indicate any violations of this Paragraph.

On December 28, 2018, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with the Monitor's determination.

## Section 10: Misconduct and Complaints

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### COURT ORDER XI. MISCONDUCT AND COMPLAINTS

#### *a. Internally-Discovered Violations*

**Paragraph 102.** *MCSO shall require all personnel to report without delay alleged or apparent misconduct by other MCSO Personnel to a Supervisor or directly to IA that reasonably appears to constitute: (i) a violation of MCSO policy or this Order; (ii) an intentional failure to complete data collection or other paperwork requirements required by MCSO policy or this Order; (iii) an act of retaliation for complying with any MCSO policy; (iv) or an intentional provision of false information in an administrative investigation or any official report, log or electronic transmittal of information. Failure to voluntarily report or document apparent misconduct described in this Paragraph shall be an offense subject to Discipline.*

#### **In Full and Effective Compliance**

During our assessments of compliance with this Paragraph, we have reviewed hundreds of misconduct investigations involving MCSO personnel. Many of them have been internally generated.

During this reporting period, we reviewed 93 administrative misconduct investigations. Thirty-two were generated internally. MCSO has continued to identify and address misconduct that is raised by other employees or identified by supervisory personnel. While some of these investigations did not meet all requirements for the proper reporting or completion of misconduct investigations, we address these failures in other Paragraphs in this report.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

#### *b. Audit Checks*

**Paragraph 103.** *Within one year of the Effective Date, MCSO shall develop a plan for conducting regular, targeted, and random integrity audit checks to identify and investigate Deputies possibly engaging in improper behavior, including: Discriminatory Policing; unlawful detentions and arrests; improper enforcement of Immigration-Related Laws; and failure to report misconduct.*

#### **Phase 1:** In compliance

- Audits and Inspections Unit Operations Manual, Section 303, published on August 27, 2020.
- GH-4 (Bureau of Internal Oversight Audits and Inspections), most recently amended on February 25, 2021.

#### **Phase 2:** In compliance

Paragraph 103 requires that MCSO conduct “regular, targeted, and random integrity audit checks.” MCSO’s Audits and Inspections Unit (AIU), a unit of the Bureau of Internal Oversight (BIO), is responsible for these requirements. This Paragraph does not set frequency standards for integrity tests. During this reporting period, AIU published several completed inspection reports to fulfill the “regular” and “random” elements of this Paragraph. AIU’s inspections examined complaint intake tests, Early Identification System (EIS) alerts, Supervisor Notes, Patrol Activity Logs, traffic stop data, post-stop ethnicity, passenger contacts, County Attorney turndown dispositions, Patrol Shift Rosters, and others.

For this reporting period, AIU did not submit any inspections to fulfill the “targeted” requirements of Paragraph 103. We will continue to review AIU’s tests to verify that MCSO maintains continued compliance with this Paragraph. We will also discuss with AIU its plans for upcoming targeted audits during our next site visit.

### ***c. Complaint Tracking and Investigations***

***Paragraph 104.*** *Subject to applicable laws, MCSO shall require Deputies to cooperate with administrative investigations, including appearing for an interview when requested by an investigator and providing all requested documents and evidence. Supervisors shall be notified when a Deputy under their supervision is summoned as part of an administrative investigation and shall facilitate the Deputy’s appearance, absent extraordinary and documented circumstances.*

### **In Full and Effective Compliance**

In the fall of 2015, MCSO developed a draft checklist and investigative format for administrative investigations. All the requirements in this Paragraph were included in these protocols. The checklist and formats were approved for use in early 2016, and all personnel through the rank of captain were required to attend a training session regarding the use of these forms. Effective June 1, 2016, all administrative investigations were required to use these forms. MCSO has consistently met this requirement, and MCSO has included the checklists in administrative investigations forwarded for our review.

Since that time, the Professional Standards Bureau (PSB) drafted revisions to the investigation checklist and format to provide additional clarification on procedural requirements. We and the Parties reviewed the revisions and provided our feedback. The revised format and investigation checklist were approved for use.

During the last reporting period, we reviewed 117 administrative misconduct investigations. Forty-nine involved sworn personnel. All of these investigations were in compliance with the requirements of this Paragraph.

During this reporting period, we reviewed 93 administrative misconduct investigations. Thirty-nine involved sworn personnel. All 39 included the use of the approved investigative format and checklist. We continue to note that deputies consistently appear for scheduled interviews, provide all required information to investigators, and cooperate with investigations. There were no instances identified where a supervisor failed to facilitate a deputy's attendance at an interview or where the investigator had failed to notify the employee's supervisor of an intended administrative interview.

On March 17, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

*Paragraph 105. Investigators shall have access to, and take into account as appropriate, the collected traffic stop and patrol data, Training records, Discipline history, and any past Complaints and performance evaluations of involved officers.*

### **In Full and Effective Compliance**

Our reviews of investigations conducted by MCSO have verified that the information required for compliance with this Paragraph is consistently provided in the checklist and investigative reports.

As a result of the Second Order and effective July 20, 2016, the PSB Commander makes all preliminary disciplinary decisions. The PSB and Administrative Services Division Commanders created a worksheet that provides information regarding how MCSO makes disciplinary decisions, and how MCSO considers employees' work history. PSB includes this form in the sustained investigation documentation that we receive and review for compliance.

During this reporting period, we reviewed 46 sustained administrative misconduct investigations. Twenty of these involved misconduct by sworn personnel. Twenty involved misconduct by Detention personnel, five involved misconduct by civilian personnel, and one involved misconduct by both sworn and civilian personnel. In 17 cases, the involved employees were no longer employed at MCSO at the time of the completion of the investigation or the discipline process. Twenty-eight of the investigations involved identified personnel still employed by MCSO at the time final findings or discipline decisions were made, and one involved an unknown employee of MCSO.

In all 28, the PSB Commander determined the findings and presumptive range for the sustained violations. We found that generally, where appropriate, discipline history, past complaints, performance evaluations, traffic stop and patrol data, and training records were included in the documents considered for discipline findings. All 28 were referred for discipline or other corrective action.

On October 5, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 106.** *Records of Complaints and investigations shall be maintained and made available, un-redacted, to the Monitor and Plaintiffs' representatives upon request. The Monitor and Plaintiffs' representatives shall maintain the confidentiality of any information therein that is not public record. Disclosure of records of pending investigations shall be consistent with state law.*

**In Full and Effective Compliance**

MCSO has two obligations under this Paragraph: to maintain and make records available. The Paragraph also covers the requirement that MCSO make unredacted records of such investigations available to the Plaintiffs' attorneys and Plaintiff-Intervenor as well.

MCSO has been responsive to our requests, and neither the Plaintiffs nor Plaintiff-Intervenor have raised any concerns related to the requirements of this Paragraph for this or the past several reporting periods. MCSO, via its counsel, distributes responses to our document and site visit requests via a document-sharing website. The Plaintiffs' attorneys and Plaintiff-Intervenor have access to this information, including documents applicable to this Paragraph, at the same time as we do.

On June 3, 2019, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

## Section 11: Community Engagement

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### COURT ORDER XII. COMMUNITY ENGAGEMENT

#### *a. Community Outreach Program*

**Paragraph 107.** *To rebuild public confidence and trust in the MCSO and in the reform process, the MCSO shall work to improve community relationships and engage constructively with the community during the time that this order is in place. To this end, the MCSO shall conduct the following district community outreach program.*

**Paragraph 109.** *The Monitor shall hold at least one public meeting per quarter to coincide with the quarterly site visits by the Monitor in a location convenient to the Plaintiffs class. The meetings shall be for the purpose of reporting the MCSO' progress in implementing this Order. These meetings shall be used to inform community members of the policy changes or other significant actions that the MCSO has taken to implement the provisions of this Order. Summaries of audits and reports completed by the MCSO pursuant to this Order shall be made available. The meetings shall be under the direction of the Monitor and/or his designee. The Sheriff and/or the MCSO will participate in the meetings to provide substantive comments related to the Melendres case and the implementation of the orders resulting from it, as well as answer questions related to its implementation, if requested to do so by the Monitor or the community. If the Sheriff is unable to attend a meeting due to other obligations, he shall notify the Monitor at least 30 days prior to that meeting. The Monitor shall consult with Plaintiffs' representatives and the Community Advisory Board on the location and content of the meetings. The Monitor shall clarify for the public at these meetings that MCSO does not enforce immigration laws except to the extent that it is enforcing Arizona and federal criminal laws.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

This Paragraph, per the June 3, 2019 Order (Document 2431), returned the community meetings to the Monitor's supervision and directed the Monitor to hold at least one public meeting per quarter to coincide with the quarterly site visits by the Monitor in a location convenient to the Plaintiffs' class.

The requirement to hold a community meeting is not applicable for MCSO as it applies to the Monitor and not MCSO. We did not travel to Maricopa County in October for our in-person quarterly site visit due to the COVID-19 pandemic. We will consult with Plaintiffs' representatives and the Community Advisory Board regarding the location and content of our community meetings when we resume our in-person site visits.

**Paragraph 110.** *The meetings present an opportunity for the Monitor and MCSO representatives to listen to community members' experiences and concerns about MCSO practices. The Monitor may investigate and respond to those concerns. The Monitor shall inform the public that the purpose of the meeting is to discuss the Melendres case and the orders implementing the relief of that case. To the extent that the Monitor receives concerns at such meetings that are neither within the scope of this order nor useful in determining the Defendant's compliance with this order, it may inform the complainant how to file an appropriate complaint with the MCSO or appropriate law enforcement agency. The Sheriff may respond to non-Melendres questions raised at meetings to the extent, in his sole discretion, if the Sheriff wishes to do so.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

The requirements of this Paragraph are not applicable as they apply to actions that the Monitor, not MCSO, is required to take regarding community meetings. As noted above, we did not travel to Maricopa County in October for an in-person quarterly site visit, and therefore did not hold a community meeting.

**Paragraph 111.** *English and Spanish-speaking Monitor Personnel shall attend these meetings and be available to answer questions from the public about its publicly available reports concerning MCSO's implementation of this Order and other publicly available information. The Plaintiffs' and Plaintiff-Intervenor's representatives shall be invited to attend and the Monitor shall announce their presence and state their availability to answer questions.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

The requirements of this Paragraph are not applicable to MCSO as they apply to actions that the Monitor, not MCSO, is required to take regarding community meetings. As noted above, we did not travel to Maricopa County in October for an in-person quarterly site visit, and therefore did not hold a community meeting.

**Paragraph 112.** *At least ten days before such meetings, the Monitor shall widely publicize the meetings in English and Spanish after consulting with Plaintiffs’ representatives and the Community Advisory Board regarding advertising methods. Options for advertising include, but are not limited to, television, radio, print media, internet and social media, and any other means available. Defendants shall either provide a place for such meetings that is acceptable to the Monitor or pay the Monitor the necessary expenses incurred in arranging for such meeting places. The Defendants shall also pay the reasonable expenses of publicizing the meetings as required above, and the additional reasonable personnel and expenses that the Monitor will incur as a result of performing his obligations with respect to the Community Outreach Program. If any party determines there is little interest or participation in such meetings among community members, or that they have otherwise fulfilled their purpose, it can file a request with the Court that this requirement be revised or eliminated.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

The requirements of this Paragraph are not applicable as they apply to actions that the Monitor, not MCSO, is required to take regarding community meetings. As we did not travel to Maricopa County in October, we did not hold a community meeting. We will consult with Plaintiffs’ representatives and the Community Advisory Board regarding community meeting advertising when we resume our in-person site visits.

***b. MCSO Community Liaison***

**Paragraph 113.** *MCSO shall select or hire a Community Liaison who is fluent in English and Spanish. The hours and contact information of the MCSO Community Outreach Division (“COD”) shall be made available to the public including on the MCSO website. The COD shall be directly available to the public for communications and questions regarding the MCSO.*

**In Full and Effective Compliance**

This Paragraph requires that MCSO select or hire a Community Liaison who is fluent in English and Spanish. MCSO’s Community Outreach Division (COrD) has two Community Liaison Officers who are fluent in English and Spanish. The COrD uses the term “Community Liaison” for these two individuals and its other staff members, though not all of them are bilingual.

The MCSO website lists the hours and contact information of the COrD and its staff – as well as the COrD’s mission and overarching goals, and frequently asked questions regarding MCSO.

On June 17, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 114.** *The COD shall have the following duties in relation to community engagement:*

- a. to coordinate the district community meetings described above in Paragraphs 109 to 112;*
- b. to provide administrative support for, coordinate and attend meetings of the Community Advisory Board described in Paragraphs 117 to 118; and*
- c. to compile any complaints, concerns and suggestions submitted to the COD by members of the public about the implementation of this Order and the Court's order of December 23, 2011, and its findings of fact and conclusions of law dated May 24, 2013, even if they don't rise to the level of requiring formal action by IA or other component of the MCSO, and to respond to Complainants' concerns; and*
- d. to communicate concerns received from the community at regular meetings with the Monitor and MCSO leadership.*

### **In Full and Effective Compliance**

Pursuant to the June 3, 2019 Order (Document 2431), Subparagraphs a. and b. of this Paragraph are no longer applicable.

During this reporting period, on August 16, 2022, the CAB held a public meeting over Zoom for members of the Plaintiffs' class and representatives of community groups. At the meeting, CAB members presented their concerns with investigative timeliness issues in the Professional Standards Bureau (PSB), noting that the delays cause problems for complainants and subject employees alike; and their concerns with the findings of the most recent Traffic Stop Annual Report. The CAB members also allowed the participants to ask questions and share feedback. The meeting was conducted in English and Spanish. This was the second Zoom-based community meeting that the CAB has held this year.

As in the past, some CAB members participated in a few of our compliance meetings during our October remote site visit – including meetings on MCSO's interaction with the CAB and community engagement and MCSO's Constitutional Policing Plan.

MCSO has provided documentation that all current COrD personnel completed an online Complaint Intake and Processing course, to assist them in receiving and appropriately directing any complaints or concerns they receive from community members, including complaints of potential employee misconduct. When new personnel are assigned to the COrD, we request and review documentation that the new staff members have completed this training. During our most recent site visit, COrD personnel reported that no new personnel were assigned to the Division within the last quarter.

In the past, COrD personnel have reported that they occasionally receive concerns from community members, and that they forward those that are complaints to PSB; and that they sometimes receive inquiries for which COrD staff believe it is appropriate to direct community members to written materials or MCSO's website.

COrD has developed a form for capturing information on complaints, concerns, and suggestions submitted by members of the public to the COrD; however, COrD personnel maintain that they did not receive any *Melendres*-related complaints, concerns, or suggestions from the public during

this reporting period. In its submission for this reporting period, COrD personnel wrote, “The Community Outreach Division did not receive any complaints, concerns or suggestions by members of the public regarding the implementation of the Court’s Orders during July 1<sup>st</sup>, through September 30<sup>th</sup>, 2022. Therefore, no response was prepared.”

During our upcoming site visit, we will discuss with COrD personnel any complaints, concerns, and suggestions it has received from the public; as well as the requirement that COrD communicate any concerns received from the community at regular meetings with the Monitor and MCSO leadership.

On June 17, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

### ***c. Community Advisory Board***

***Paragraph 115.*** *MCSO and Plaintiffs’ representatives shall work with community representatives to create a Community Advisory Board (“CAB”) to facilitate regular dialogue between the MCSO and the community, and to provide specific recommendations to MCSO and the Monitor about policies and practices that will increase community trust and ensure that the provisions of this Order and other orders entered by the Court in this matter are met. The MCSO shall cooperate with the Monitor to assure that members of the CAB are given appropriate access to relevant material, documents, and training so the CAB can make informed recommendations and commentaries to the Monitor.*

#### **Phase 1:** In compliance

- Court Implementation Division Operations Manual, most recently revised on November 13, 2019.

#### **Phase 2:** In compliance

It is important that MCSO personnel interact with CAB members in a respectful and timely manner, and we continue to monitor MCSO personnel’s interactions with CAB members between and during our site visit meetings.

During this reporting period, MCSO’s responsiveness to the CAB’s inquiries and requests for information continued to meet the requirements of this Paragraph. We will continue to closely monitor the measure to which MCSO facilitates a better working relationship with the CAB and make compliance assessments accordingly.

CAB members continue to provide specific recommendations to MCSO about policies and practices that will increase community trust and ensure that the provisions of the Orders entered by the Court in this matter are met. During this reporting period, the CAB reviewed and provided feedback on policies.

**Paragraph 116.** *The CAB shall have five members, two to be selected by MCSO and two to be selected by Plaintiffs' representatives. One member shall be jointly selected by MCSO and Plaintiffs' representatives. Members of the CAB shall not be MCSO Employees or any of the named class representatives nor any of the attorneys involved in this case. The CAB shall continue for at least the length of this Order.*

**Phase 1:** In compliance

- Court Implementation Division Operations Manual, most recently revised on November 13, 2019.

**Phase 2:** Deferred

The CAB is designed to be a five-member body – with two members selected by MCSO, two members selected by Plaintiffs' attorneys, and one member jointly selected by MCSO and Plaintiffs' attorneys. During the last reporting period, two CAB members resigned, leaving the CAB with only three members. None of the CAB members are MCSO employees, named class representatives, or attorneys involved in this case.

During this reporting period, the CAB waited for MCSO to appoint one new member, and for MCSO and the Plaintiffs' attorneys to jointly appoint one new member, to resume its full strength. Neither opening was filled. For the CAB to be a viable part of the reform effort, it is essential that it has a full panel. We are following this closely and will report further on this in our next quarterly status report. For this reporting period, we are deferring compliance with this Paragraph.

**Paragraph 117.** *The CAB shall hold meetings at regular intervals. The meetings may be either public or private as the purpose of the meeting dictates, at the election of the CAB. The Defendants shall provide a suitable place for such meetings. The Monitor shall coordinate the meetings and communicate with CAB members, and provide administrative support for the CAB.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

The requirements of this Paragraph do not require any action on the part of MCSO; thus, they are not applicable. During this reporting period, the CAB held a public community meeting via Zoom. CAB members met regularly as a group, often with members of the Monitoring Team. A member of the Monitoring Team coordinated the meetings and provided administrative support for the CAB. In addition, during our October remote site visit, some CAB members participated in a few of our compliance meetings – including meetings on the Constitutional Policing Plan, community engagement/CAB, and other topics. In our regular interactions with CAB members via conference calls and virtual meetings, we have provided information about MCSO's progress achieving compliance with the Orders and discussed ways to improve the relationship between the Plaintiffs' class and MCSO.

**Paragraph 118.** *During the meetings of the CAB, members will relay or gather concerns from the community about MCSO practices that may violate the provisions of this Order and the Court's previous injunctive orders entered in this matter and transmit them to the Monitor and the MCSO for investigation and/or action. The Parties will also be given the CAB's reports and recommendations to the Monitor.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

The requirements of this Paragraph do not require any action on the part of MCSO; thus, they are not applicable. As noted above, during this reporting period, the CAB held a public meeting via Zoom. In addition, as in the past, some CAB members participated in a few of our compliance meetings during our October remote site visit.

We requested from MCSO documentation of concerns received from CAB members during their meetings about MCSO practices that may be in violation of the Court's Orders that were transmitted to the MCSO for investigation and/or action during this reporting period. According to MCSO, "There were no documented concerns received from the CAB about MCSO practices that may be in violation of the Court's Order transmitted to MCSO for investigation and/or action."

## Second Supplemental Permanent Injunction/Judgment Order

### Section 12: Misconduct Investigations, Discipline, and Grievances

#### **COURT ORDER XV. MISCONDUCT INVESTIGATIONS, DISCIPLINE, AND GRIEVANCES**

***Paragraph 163.** The Sheriff will ensure that all allegations of employee misconduct, whether internally discovered or based on a civilian complaint, are fully, fairly, and efficiently investigated; that all investigative findings are supported by the appropriate standard of proof and documented in writing; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair, consistent, unbiased and provides due process. To achieve these outcomes, the Sheriff shall implement the requirements set out below.*

#### **A. Policies Regarding Misconduct Investigations, Discipline, and Grievances**

***Paragraph 165.** Within one month of the entry of this Order, the Sheriff shall conduct a comprehensive review of all policies, procedures, manuals, and other written directives related to misconduct investigations, employee discipline, and grievances, and shall provide to the Monitor and Plaintiffs new policies and procedures or revise existing policies and procedures. The new or revised policies and procedures that shall be provided shall incorporate all of the requirements of this Order. If there are any provisions as to which the parties do not agree, they will expeditiously confer and attempt to resolve their disagreements. To the extent that the parties cannot agree on any proposed revisions, those matters shall be submitted to the Court for resolution within three months of the date of the entry of this Order. Any party who delays the approval by insisting on provisions that are contrary to this Order is subject to sanction.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

MCSO provided us with the following:

- CP-2 (Code of Conduct), most recently amended on April 27, 2022.
- CP-3 (Workplace Professionalism: Discrimination and Harassment), most recently amended on December 16, 2021.
- CP-5 (Truthfulness), most recently amended on November 17, 2022.
- CP-8 (Preventing Racial and Other Bias-Based Profiling), most recently amended on October 13, 2022.
- CP-11 (Anti-Retaliation), most recently amended on January 6, 2022.
- EA-2 (Patrol Vehicles), most recently revised on March 16, 2022.
- GA-1 (Development of Written Orders), most recently amended on January 12, 2022.

- GB-2 (Command Responsibility), most recently amended on June 28, 2019.
- GC-4 (Employee Performance Appraisals), most recently amended on April 27, 2022.
- GC-4 (S) (Employee Performance Management), most recently amended on November 10, 2021.
- GC-7 (Transfer of Personnel), most recently amended on October 29, 2021.
- GC-11 (Employee Probationary Periods and Unclassified Employees), most recently amended on January 12, 2022.
- GC-12 (Hiring and Promotional Procedures), most recently amended on November 17, 2022.
- GC-16 (Employee Grievance Procedures), most recently amended on December 8, 2021.
- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- GD-9 (Litigation Initiation, Document Preservation, and Document Production Notices), most recently amended on September 15, 2021.
- GE-4 (Use, Assignment, and Operation of Vehicles), most recently amended on April 6 2022.
- GG-1 (Peace Officer Training Administration), most recently amended on November 17, 2022.
- GG-2 (Detention/Civilian Training Administration), most recently amended on November 17, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- GH-4 (Bureau of Internal Oversight Audits and Inspections), most recently amended on February 25, 2021.
- GH-5 (Early Identification System), most recently amended on December 16, 2021.
- GI-5 (Voiance Language Services), most recently amended on December 8, 2021.
- GJ-24 (Community Relations and Youth Programs), most recently revised on April 7, 2022.
- GJ-26 (Sheriff's Reserve Deputy Program), most recently amended on June 9, 2021.
- GJ-27 (Sheriff's Posse Program), most recently amended on June 25, 2021.
- GJ-35 (Body-Worn Cameras), most recently amended on February 2, 2022.
- Administrative Services Division Operations Manual, most recently amended on November 14, 2022.
- Audits and Inspections Unit Operations Manual, currently under revision.

- Body-Worn Camera Operations Manual, published on December 22, 2016.
- Professional Standards Bureau Operations Manual, published on December 13, 2018.
- Training Division Operations Manual, most recently amended on April 4, 2022.

This Paragraph implies that the review process and final adoption of the updated policies would take two months to complete, assuming that the new or revised policies were provided within one month of the issuance of the Second Order. This is due, in some measure, to researched and well-considered recommendations by the Parties; and robust discussion about policy language, application, and outcomes during our site visit meetings.

We received a majority of the documents listed above within one month of the entry of the Order. We and the Parties conducted initial reviews and returned the revised documents, with additional recommendations, to MCSO for additional work. MCSO continues provide us and the Parties with any new and revised policies for review and recommendations. MCSO remains in compliance with this Paragraph.

***Paragraph 166.*** *Such policies shall apply to all misconduct investigations of MCSO personnel.*

***Paragraph 167.*** *The policies shall include the following provisions:*

- a. *Conflicts of interest in internal affairs investigations or in those assigned by the MCSO to hold hearings and make disciplinary decisions shall be prohibited. This provision requires the following:*
  - i. *No employee who was involved in an incident shall be involved in or review a misconduct investigation arising out of the incident.*
  - ii. *No employee who has an external business relationship or close personal relationship with a principal or witness in a misconduct investigation may investigate the misconduct. No such person may make any disciplinary decisions with respect to the misconduct including the determination of any grievance or appeal arising from any discipline.*
  - iii. *No employee shall be involved in an investigation, whether criminal or administrative, or make any disciplinary decisions with respect to any persons who are superior in rank and in their chain of command. Thus, investigations of the Chief Deputy's conduct, whether civil or criminal, must be referred to an outside authority. Any outside authority retained by the MCSO must possess the requisite background and level of experience of internal affairs investigators and must be free of any actual or perceived conflicts of interest.*
- b. *If an internal affairs investigator or a commander who is responsible for making disciplinary findings or determining discipline has knowledge of a conflict of interest affecting his or her involvement, he or she should immediately inform the Commander of the Professional Standards Bureau or, if the holder of that office also suffers from a*

*conflict, the highest-ranking, non-conflicted chief-level officer at MCSO or, if there is no non-conflicted chief-level officer at MCSO, an outside authority. Any outside authority retained by the MCSO must possess the requisite background and level of experience of internal affairs investigators and must be free of any actual or perceived conflicts of interest.*

- c. Investigations into an employee's alleged untruthfulness can be initiated by the Commander of the Professional Standards Bureau or the Chief Deputy. All decisions not to investigate alleged untruthfulness must be documented in writing.*
- d. Any MCSO employee who observes or becomes aware of any act of misconduct by another employee shall, as soon as practicable, report the incident to a Supervisor or directly to the Professional Standards Bureau. During any period in which a Monitor is appointed to oversee any operations of the MCSO, any employee may, without retaliation, report acts of alleged misconduct directly to the Monitor.*
- e. Where an act of misconduct is reported to a Supervisor, the Supervisor shall immediately document and report the information to the Professional Standards Bureau.*
- f. Failure to report an act of misconduct shall be considered misconduct and may result in disciplinary or corrective action, up to and including termination. The presumptive discipline for a failure to report such allegations may be commensurate with the presumptive discipline for the underlying misconduct.*
- g. No MCSO employee with a rank lower than Sergeant will conduct an investigation at the District level.*

### **In Full and Effective Compliance**

To determine Phase 2 compliance with this Paragraph, we review administrative misconduct investigations.

During this reporting period, we reviewed 93 closed administrative misconduct investigations, including five classified as critical incidents. Sworn, Detention, or civilian personnel assigned to the Professional Standards Bureau (PSB) conducted 69 of the investigations we reviewed. PSB outsourced eight investigations to an outside vendor. Sworn supervisors in Districts or Divisions outside of PSB conducted the remaining 16.

Paragraph 167.a.i-iii. prohibits any employee with any conflicts of interest from participating in, holding hearings on, or making any disciplinary decisions in a misconduct investigation. During this reporting period, there were no instances where a conflict of interest was identified.

Paragraph 167.b. requires that if the internal affairs investigator or a commander responsible for making disciplinary decisions identifies a conflict of interest, appropriate notifications must be made immediately. There were no instances during this reporting period where a supervisor failed to identify a conflict of interest and inappropriately conducted an investigation.

Paragraph 167.c. requires that investigations into truthfulness be initiated by the Chief Deputy or the PSB Commander. MCSO identified six instances during this reporting period where PSB believed that a truthfulness allegation was appropriate and conducted the proper investigation. We did not identify any investigations during this reporting period where we believe that MCSO should have initiated an investigation into truthfulness – and failed to do so.

Paragraph 167.d. requires that any MCSO employee who observes or becomes aware of misconduct by another employee shall immediately report such conduct to a supervisor or directly to PSB. Per the requirement, during the period in which the Monitor has authority to oversee any operations of MCSO, any employee may also report alleged misconduct to the Monitor. Of the 93 administrative cases we reviewed for this reporting period, there were 32 investigations where an employee reported potential misconduct by another employee, or a supervisor identified potential employee misconduct. We did not identify any instances during this reporting period where an employee failed to report potential misconduct as required.

Paragraph 167.e. requires that when supervisors learn of an act of misconduct, the supervisor shall immediately document and report the information to PSB. There were no investigations during this reporting period where a supervisor failed to document and report potential misconduct they were aware of.

Paragraph 167.f. provides for the potential for a disciplinary sanction or other corrective action if an employee fails to bring forth an act of misconduct. There were no instances during this reporting period where an employee was alleged to have failed to immediately report misconduct as required.

Paragraph 167.g. requires that a sergeant or higher-ranking employee conduct all misconduct investigations conducted at the District level. All District-level cases that we reviewed for this reporting period complied with this requirement.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 168.*** *All forms of reprisal, discouragement, intimidation, coercion, or adverse action against any person, civilian, or employee because that person reports misconduct, attempts to make or makes a misconduct complaint in good faith, or cooperates with an investigation of misconduct constitute retaliation and are strictly prohibited. This also includes reports of misconduct made directly to the Monitor, during any period in which a Monitor is appointed to oversee any operations of the MCSO.*

### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations that were completed during this reporting period.

There were two investigations where allegations applicable to compliance with this Paragraph were made. Neither had sustained findings for any violation addressed by this Paragraph, and we concurred with all findings.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 169.*** *Retaliating against any person who reports or investigates alleged misconduct shall be considered a serious offense and shall result in discipline, up to and including termination.*

#### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations that were completed during this reporting period.

There were two investigations where allegations applicable to compliance with this Paragraph were made. Neither had sustained findings for any violation addressed by this Paragraph, and we concurred with all findings.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 170.*** *The Sheriff shall investigate all complaints and allegations of misconduct, including third-party and anonymous complaints and allegations. Employees as well as civilians shall be permitted to make misconduct allegations anonymously.*

#### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period. Sixty-one were initiated as a result of external complaints, and 32 were internally generated. We also reviewed five criminal investigations conducted by MCSO. All of the criminal investigations were initiated as a result of external complaints

Of the 93 administrative misconduct investigations we reviewed for this reporting period, six involved anonymous complaints. Thirteen others were complaints from identified third-party complainants. We have not become aware of any evidence indicating that MCSO refused to accept and complete any investigations initiated by third-party or anonymous complainants. None of the 93 administrative misconduct investigations we reviewed during this reporting period included any allegations indicating that any third-party or anonymous complaint was not appropriately accepted and investigated.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 171.** The MCSO will not terminate an administrative investigation solely on the basis that the complainant seeks to withdraw the complaint, or is unavailable, unwilling, or unable to cooperate with an investigation, or because the principal resigns or retires to avoid discipline. The MCSO will continue the investigation and reach a finding, where possible, based on the evidence and investigatory procedures and techniques available.*

#### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period.

We determined that 18 of the 93 completed administrative investigations we reviewed involved complainants who sought to withdraw their complaints; or were unavailable, unwilling, or unable to cooperate. MCSO completed all 18 investigations and reached a finding as required. We also found that in 27 of the 93 investigations, one or more of the principals left MCSO employment prior to the finalization of the investigation or discipline process. MCSO completed all of these investigations and reached a finding. None of the 93 investigations we evaluated for compliance were prematurely terminated.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 172.** Employees are required to provide all relevant evidence and information in their custody and control to internal affairs investigators. Intentionally withholding evidence or information from an internal affairs investigator shall result in discipline.*

#### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph during this reporting period, we reviewed 93 completed administrative misconduct investigations. There were three investigations where PSB identified that an employee had failed to accurately provide all information or evidence required during the investigation. PSB initiated a truthfulness investigation in two and the allegations were sustained. Both employees were dismissed from MCSO employment. In the third investigation, the employee resigned prior to the completion of the investigation and declined to provide an interview.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 173.** *Any employee who is named as a principal in an ongoing investigation of serious misconduct shall be presumptively ineligible for hire or promotion during the pendency of the investigation. The Sheriff and/or the MCSO shall provide a written justification for hiring or promoting an employee or applicant who is a principal in an ongoing investigation of serious misconduct. This written justification shall be included in the employee's employment file and, during the period that the MCSO is subject to Monitor oversight, provided to the Monitor.*

**Phase 1:** In compliance

- GC-4 (Employee Performance Appraisals), most recently amended on April 27, 2022.
- GC-4 (S) (Employee Performance Management), most recently amended on November 10, 2021.
- GC-11 (Employee Probationary Periods and Unclassified Employees), most recently amended on January 12, 2022.
- GC-12 (Hiring and Promotional Procedures), most recently amended on April 13, 2022.

**Phase 2:** In compliance

MCSO has established a protocol to address the requirements of this Paragraph. When a promotion list is established for sworn or Detention personnel, a copy of the list is forwarded to the Professional Standards Bureau (PSB). Before any promotion is finalized, PSB conducts a check of each employee's disciplinary profile in the automated system (IAPro). As part of the promotional process, MCSO conducts a meeting with command staff to discuss each employee's qualifications. During this meeting, the results of the IAPro checks are provided to the staff for review and consideration. The PSB Commander generally attends the promotion meetings for both Detention and sworn personnel, and clarifies any questions regarding the disciplinary history that the staff may have. When an employee is moved from a civilian employment position to a sworn employment position, MCSO conducts a thorough background investigation. The process involves a review and update of the candidate's PSB files, which is completed by Pre-Employment Services. For Detention employees who are moving to sworn positions, the information in the employee's file is updated to include any revised or new information. Due to the scheduling of our site visits, we inspect personnel files for employees who were promoted during the last month of the preceding quarter, and the first two months of the current reporting period. In our reviews, we ensure that the documentation, as it pertains to compliance with this Paragraph, is included in personnel files.

MCSO reported a total of 17 promotions during this review period. The promotions included three sworn employees, four Detention employees, and 10 civilian employees. None of the sworn or civilian employees who were promoted had any disciplinary histories that would preclude them from promotion, and none had open misconduct investigations. One Detention employee who was promoted to Captain had an open misconduct investigation. An Executive Chief submitted a memorandum stating that the allegations were not of a serious nature. The justification memo also noted that PSB affirmed that the allegations were not expected to be sustained. We reviewed the justification memo and noted no concerns. MCSO reported the hiring of eight Detention employees and seven civilian employees. None of the Detention or civilian employees had any disciplinary histories that would preclude their hiring, and none had any open misconduct investigations.

We have been unable to review personnel files since January 2020, due to the fact that we have conducted our site visits remotely. When we resume our in-person site visits, we will follow up on these cases to ensure that the appropriate documentation is included in each employee's file.

***Paragraph 174.** Employees' and applicants' disciplinary history shall be considered in all hiring, promotion, and transfer decisions, and this consideration shall be documented. Employees and applicants whose disciplinary history demonstrates multiple sustained allegations of misconduct, or one sustained allegation of a Category 6 or Category 7 offense from MCSO's disciplinary matrices, shall be presumptively ineligible for hire or promotion. MCSO shall provide a written justification for hiring or promoting an employee or applicant who has a history demonstrating multiple sustained allegations of misconduct or a sustained Category 6 or Category 7 offense. This written justification shall be included in the employee's employment file and, during the period that the MCSO is subject to Monitor oversight, provided to the Monitor.*

### **In Full and Effective Compliance**

For employees who are promoted, the documentation submitted by MCSO generally includes the disciplinary history for the previous 10 years and any applicable disciplinary actions. MCSO also provides the disciplinary history of Detention and civilian employees who have been upgraded in classification to sworn status.

For the third quarter of 2022, MCSO reported hiring 15 new employees. The new hires consisted of eight Detention employees and seven civilian employees. No sworn employees were hired in the third quarter. We reviewed the documentation provided for the Detention and civilian employees; none of the employees had disciplinary histories that would preclude their hiring.

On June 17, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 175.** *As soon as practicable, commanders shall review the disciplinary history of all employees who are transferred to their command.*

**Phase 1:** In compliance

- GH-5 (Early Identification System), most recently amended on December 16, 2021.
- GC-7 (Transfer of Personnel), most recently amended on October 29, 2021.

**Phase 2:** In compliance

Per policy, MCSO is to conduct an EIS review within 14 days of an affected employee's transfer. We requested a list of employees that were transferred during this reporting period. From the list, we selected a sample of employees to review and verify that there was documentation of the required EIS reviews. To verify compliance with this Paragraph, we review the transfer request documents that MCSO completes for each employee. The documents memorialize the commander's acknowledgment of review of the transferred employee's disciplinary history, as well as the review of the employee's performance appraisals for the previous five years. This review is generally conducted before the gaining commander accepts the transfer, a few days prior to the transfer becoming effective.

For July, we requested a list of all employees who were transferred during the month. MCSO submitted a list, and we selected a sample of 29 employees who would fall under the requirements of this Paragraph. The list we requested was comprised of 12 Detention employees and 17 sworn employees. Of the 12 Detention employees requested, all had proper documentation of command review of their EIS profiles. Of the 17 sworn employees requested, two had proper documentation of command review of their EIS profiles. Fifteen sworn employees had reviews of their EIS resumes conducted outside the timeframe required by policy. For July, 14 of 29 employee transfers were in compliance with timely command review of the employees' EIS profiles. For August, we requested documentation for all 25 employees who were transferred during the month. This list was comprised of 18 Detention employees and seven sworn employees. Sixteen of the 18 Detention employees had proper documentation of command review of their EIS profiles. All seven sworn employees had proper documentation of command review of their EIS profiles. For August, 23 of 25 employee transfers were in compliance with timely command review of the employees' EIS profiles. For September, we requested a list of all employees who were transferred during the month. MCSO submitted a list, and we selected all 23 employees to review. This list was comprised of 17 Detention employees and six sworn employees. All of the 17 Detention Officers had proper documentation of command review of their EIS profiles, and all six sworn employees had proper documentation of command review of their EIS profiles. For September, all 23 employee transfers were in compliance with timely command review of the employees' EIS profiles. For the third quarter of 2022, 60 of 77 employees transferred had proper documentation of timely command review of their EIS profiles. The compliance rate for the third quarter was 77.92%. MCSO was previously in compliance with this Paragraph. If MCSO fails to meet the requirements of this Paragraph in our next quarterly review, we will withdraw compliance.

**Paragraph 176.** *The quality of investigators' internal affairs investigations and Supervisors' reviews of investigations shall be taken into account in their performance evaluations.*

**Phase 1:** In compliance

- GC-4 (Employee Performance Appraisals), most recently amended on April 27, 2022.
- GC-4 (S) (Employee Performance Management), most recently amended on November 10, 2021.

**Phase 2:** In compliance

This Paragraph requires that employees who conduct misconduct investigations have an assessment on the quality of their investigations documented in their Employee Performance Appraisals. This Paragraph also requires that Commanders who review their subordinates' misconduct investigations be assessed on the quality of those reviews, in their own EPAs. To assess compliance with this Paragraph, we look for specific comments by raters completing EPAs. In supervisor EPAs, we look for comments addressing the quality of investigations. In commanders' EPAs, we look for comments assessing the quality of reviews of investigations. In many instances, the employee being rated does not have any subordinates, or has not completed or reviewed any misconduct investigations. In these cases, we look for comments by the rater that indicate why the employee was not rated on this requirement. In addition, we review a list of all PSB memos indicating investigative deficiencies in misconduct investigations. If we find any deficiencies that correspond to the employee's evaluation period, we expect those to be identified in the employee's EPA. If we find documented deficiencies for the employee who is being evaluated, and the rater fails to note these deficiencies in the EPA, it will affect compliance with the requirements of this Paragraph.

We reviewed Employee Performance Appraisals for 22 supervisors and commanders who received EPAs during this reporting period. All of the 22 supervisor EPAs rated the quality and effectiveness of supervision. All of the 22 supervisor EPAs contained comments and/or rated the supervisors' demonstrated ability to identify and effectively respond to misconduct. Twenty-one of 22 supervisor EPAs sufficiently commented on the supervisors' quality of internal affairs investigations or the quality of their reviews of internal affairs investigations. One first-line supervisor in Patrol had a deficiency memo issued during the employee's EPA rating period. This deficiency memo, issued by PSB, was not mentioned or taken into account in the assessment of compliance for this Paragraph. This EPA was not in compliance with the requirements set forth in this Paragraph. For supervisors who did not conduct any internal affairs investigations during the appraisal period, this information was appropriately documented on their EPAs. As it pertains to this Paragraph, 21 of 22 supervisor EPAs, or 95.45%, were in compliance.

**Paragraph 177.** *There shall be no procedure referred to as a “name-clearing hearing.” All pre-disciplinary hearings shall be referred to as “pre-determination hearings,” regardless of the employment status of the principal.*

### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period.

In misconduct investigations that resulted in serious discipline and in which the employee was afforded the opportunity for an administrative hearing, the only reference to the hearing was “pre-determination hearing.”

On June 18, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

### **B. Misconduct-Related Training**

**Paragraph 178.** *Within three months of the finalization of these policies consistent with ¶ 65 of this Order, the Sheriff will have provided all Supervisors and all personnel assigned to the Professional Standards Bureau with 40 hours of comprehensive training on conducting employee misconduct investigations. This training shall be delivered by a person with subject matter expertise in misconduct investigation who shall be approved by the Monitor. This training will include instruction in:*

- a. investigative skills, including proper interrogation and interview techniques, gathering and objectively analyzing evidence, and data and case management;*
- b. the particular challenges of administrative law enforcement misconduct investigations, including identifying alleged misconduct that is not clearly stated in the complaint, or that becomes apparent during the investigation;*
- c. properly weighing the credibility of civilian witnesses against employees;*
- d. using objective evidence to resolve inconsistent statements;*
- e. the proper application of the appropriate standard of proof;*
- f. report-writing skills;*
- g. requirements related to the confidentiality of witnesses and/or complainants;*
- h. considerations in handling anonymous complaints;*
- i. relevant MCSO rules and policies, including protocols related to administrative investigations of alleged officer misconduct; and*
- j. relevant state and federal law, including Garrity v. New Jersey, and the requirements of this Court’s orders.*

### **In Full and Effective Compliance**

MCSO supplied the PSB40 curriculum to all personnel assigned to PSB and District supervisors when it was first developed. Subsequently, all promotional candidates receive this curriculum in the Supervisors' Program prior to or shortly after their promotion.

MCSO delivered the PSB40 curriculum once during this reporting period to 23 sworn personnel. No personnel needed test remediation.

This course is reserved for delivery on an as-needed basis to new sergeants.

The PSB40 continues to need annual review. MCSO told us that the expected revisions should occur after the review and approval of the new 2022 PSB8 External classroom curriculum.

On June 17, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion.

***Paragraph 179.** All Supervisors and all personnel assigned to the Professional Standards Bureau also will receive eight hours of in-service training annually related to conducting misconduct investigations. This training shall be delivered by a person with subject matter expertise in misconduct investigation who shall be approved by the Monitor.*

#### **In Full and Effective Compliance**

MCSO supplies the PSB8 External curriculum, which consists of eight hours of annual in-service training, to District supervisors. Additionally, MCSO supplies the PSB8 Internal curriculum, which consists of eight hours of annual in-service training, to PSB personnel. External vendors commonly deliver this. When an external vendor cannot be obtained for any reason, PSB personnel must attend the PSB8 External classroom training.

The 2021 annual eight-hour in-service training for District supervisors (PSB8 External) was not delivered during this reporting period. The 2022 curriculum is still under development.

The 2022 annual eight-hour in-service training for PSB personnel (PSB8 Internal) was delivered during this reporting period to 52 personnel (18 sworn, 18 Detention, 16 civilian). A significant number of personnel (36) needed test remediation. A member of the Training Division saw this training session. The instructor was rated above average in 15 of 17 reviewed criteria, and average in only two of 17 reviewed criteria. This was noteworthy considering the test failure rate of the PSB sworn and detention personnel. The test was reviewed by MCSO, our Team, and the Parties.

On June 17, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion.

**Paragraph 180.** *Within three months of the finalization of these policies consistent with ¶ 165 of this Order, the Sheriff will provide training that is adequate in quality, quantity, scope, and type, as determined by the Monitor, to all employees on MCSO's new or revised policies related to misconduct investigations, discipline, and grievances. This training shall include instruction on identifying and reporting misconduct, the consequences for failing to report misconduct, and the consequences for retaliating against a person for reporting misconduct or participating in a misconduct investigation.*

### **In Full and Effective Compliance**

MCSO distributes new or annually revised policies via the HUB, an electronic training management system. This training includes updates to all policies related to misconduct investigations, discipline, and grievances. Each distribution requires all employees to complete personal attestations to indicate that they have read and understand the policy requirements.

To assess compliance with this Paragraph, we review the HUB generated reports of attestations that identify each individual and their dates of review. Compliance assessments for this Paragraph are based on the review of attestations for the following policies: CP-2 (Code of Conduct); CP-3 (Workplace Professionalism: Discrimination and Harassment); CP-11 (Anti-Retaliation); GB-2 (Command Responsibility); GH-2 (Internal Investigations); GC-16 (Employee Grievance Procedures); and GC-17 (Employee Disciplinary Procedures).

During this reporting period, we reviewed the status of individual reviews for Briefing Board (BB) 22-34 (CP-2), BB 21-70 (CP-3), BB 22-01 (CP-11), BB 22-08 (GB-2), BB 20-39 (GH-2), BB 21-66 (GC-16), and BB 22-36 (GC-17). All employee categories remain in compliance.

On June 17, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 181.** *Within three months of the finalization of these policies consistent with ¶ 165 of this Order, the Sheriff will provide training that is adequate in quality, quantity, scope, and type, as determined by the Monitor, to all employees, including dispatchers, to properly handle civilian complaint intake, including how to provide complaint materials and information, and the consequences for failing to take complaints.*

### **Phase 1: In compliance**

- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- GG-1 (Peace Officer Training Administration), most recently amended on November 17, 2022.
- GG-2 (Detention/Civilian Training Administration), most recently amended on November 17, 2022.

- Training Division Operations Manual, most recently amended on April 4, 2022.

**Phase 2:** In compliance

MCSO currently delivers the 2021 Complaint Intake and Reception Training via the HUB to all new hires in all personnel categories. This first training provides important guidance when interacting with members of the public who wish to file a complaint against MCSO personnel. The 2021 Complaint Intake and Reception training continues to require annual review.

***Paragraph 182.** Within three months of the finalization of these policies consistent with ¶ 165 of this Order, the Sheriff will provide training that is adequate in quality, quantity, scope, and type, as determined by the Monitor, to all Supervisors on their obligations when called to a scene by a subordinate to accept a civilian complaint about that subordinate's conduct and on their obligations when they are phoned or emailed directly by a civilian filing a complaint against one of their subordinates.*

**In Full and Effective Compliance**

This Paragraph requires that all supervisors receive training on their obligations when responding to a scene by a subordinate to accept a civilian complaint, or when they receive a complaint by telephone or email. All existing and new supervisors receive this first training content within the Misconduct Investigative Training (PSB40) and the Complaint Reception and Processing training; and it is covered in subsequent annual Supervisors' Responsibilities: Effective Law Enforcement (SRELE) and Annual Combined Training (ACT) programs. All active supervisors receive this training at least once; and in most cases, more than once.

On September 24, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**C. Administrative Investigation Review**

***Paragraph 183.** The Sheriff and the MCSO will conduct objective, comprehensive, and timely administrative investigations of all allegations of employee misconduct. The Sheriff shall put in place and follow the policies set forth below with respect to administrative investigations.*

***Paragraph 184.** All findings will be based on the appropriate standard of proof. These standards will be clearly delineated in policies, training, and procedures, and accompanied by detailed examples to ensure proper application by internal affairs investigators.*

**In Full and Effective Compliance**

To determine Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period.

Of the 93 cases we reviewed, 92 (99%) complied with the requirements of this Paragraph. In one, we believe findings of sustained should have been made and were not. As is our practice, we will discuss this case with MCSO during our next site visit.

On June 18, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 185.** Upon receipt of any allegation of misconduct, whether internally discovered or based upon a civilian complaint, employees shall immediately notify the Professional Standards Bureau.*

### **In Full and Effective Compliance**

To determine Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period. There were no instances where PSB was not appropriately notified at the time of complaint as required. We also reviewed five criminal misconduct investigations conducted by MCSO. PSB was appropriately notified in all five of these investigations.

On June 18, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 186.** Effective immediately, the Professional Standards Bureau shall maintain a centralized electronic numbering and tracking system for all allegations of misconduct, whether internally discovered or based upon a civilian complaint. Upon being notified of any allegation of misconduct, the Professional Standards Bureau will promptly assign a unique identifier to the incident. If the allegation was made through a civilian complaint, the unique identifier will be provided to the complainant at the time the complaint is made. The Professional Standards Bureau's centralized numbering and tracking system will maintain accurate and reliable data regarding the number, nature, and status of all misconduct allegations, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status, if requested, and final disposition of the complaint. The system will be used to determine the status of misconduct investigations, as well as for periodic assessment of compliance with relevant policies and procedures and this Order, including requirements of timeliness of investigations. The system also will be used to monitor and maintain appropriate caseloads for internal affairs investigators.*

### **In Full and Effective Compliance**

During numerous site visits, we have met with PSB personnel to discuss and observe the capabilities of IAPro, which serves as the technology instrument that meets the compliance criteria of this Paragraph. IAPro logs critical dates and times, alerts regarding timeframes and deadlines, chronological misconduct investigation status, notifications, and dispositions. The

tracking system provides estimates of key timeframes for all investigators to ensure that they learn of previous and upcoming investigative milestones. PSB has confirmed that civil notice claims are entered in the tracking system. The IAPro system integrates exceptionally well with the EIS and BlueTeam technology systems and can be remotely accessed.

PSB has a management analyst dedicated to the administration of the centralized tracking system. The documentation that PSB has provided to us for review, and the direct user access that a member of our Team has to the centralized numbering and tracking system, indicates that the system possesses the functionality as required by this Paragraph and is being used according to the requirements of this Paragraph.

During this reporting period, we found that all 93 administrative misconduct investigations we reviewed were properly assigned a unique identifier. Sixty-one involved an external complaint requiring that PSB provide the complainant with this unique identifier. In all of the 61 cases, PSB sent an initial letter to the complainant or provided an acceptable reason for not doing so. In some cases, anonymous complainants do not provide contact information; and in others, known complainants decline to provide MCSO with adequate contact information. PSB has developed a form that identifies the reason why a required notification letter is not sent and includes this document in the cases it forwards for our review.

On June 18, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 187.** The Professional Standards Bureau shall maintain a complete file of all documents within the MCSO's custody and control relating to any investigations and related disciplinary proceedings, including pre-determination hearings, grievance proceedings, and appeals to the Maricopa County Law Enforcement Merit System Council or a state court.*

### **In Full and Effective Compliance**

To determine compliance with this Paragraph, we have verified that PSB maintains both hardcopy and electronic files intended to contain all the documents required for compliance with this Paragraph.

During our site visits, a member of our Team inspects the file rooms where hardcopies of investigations are stored and randomly reviewed case files to verify compliance. We have verified that criminal and administrative investigation files are stored in separate rooms, and access to these rooms is restricted. Our Team member has also used the access granted to IAPro to randomly select internal affairs case files to verify that all information is being maintained electronically.

In May 2018, PSB relocated to its new offsite facility. We confirmed at that time that PSB maintained both hardcopy and electronic files intended to contain all documents required for compliance with this Paragraph at the new facility.

During our January 2019 site visit, a member of our Team verified continued compliance at the PSB facility by inspecting both the criminal and administrative investigation file rooms and randomly selecting internal affairs case files to verify that all information was also being electronically maintained in IAPro.

During our October 2019 site visit, a member of our Team verified continued compliance at the PSB facility by inspecting both the criminal and administrative investigation file rooms. We also randomly reviewed both electronic and hard-copy documents to ensure that all information was being maintained as required for compliance with this Paragraph.

On June 18, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 188.** Upon being notified of any allegation of misconduct, the Professional Standards Bureau will make an initial determination of the category of the alleged offense, to be used for the purposes of assigning the administrative investigation to an investigator. After initially categorizing the allegation, the Professional Standards Bureau will promptly assign an internal affairs investigator.*

#### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we review administrative misconduct investigations, service complaints, and PSB diversions.

We previously concurred with MCSO that Phase 2 compliance with this Paragraph would be based on PSB's determination of the initial allegations, and not which category of offense was determined once the investigation is completed.

During this reporting period, we reviewed 93 administrative misconduct investigations. All 93 complied with the requirements of this Paragraph. Sixty-one were externally generated and 32 were internally generated.

We reviewed 68 service complaints during this reporting period. All were externally generated complaints. In 67 (99%) of the 68, PSB made the appropriate decision regarding categorizing the complaint. Eight (12%) were appropriately reclassified to administrative misconduct investigations either by the initiating District or Division, or after the complaints were reviewed by PSB. In one case, though we concur that it was appropriately classified as a service complaint, the complainant was not contacted in a timely manner. Of the total 68 service complaints, 67 met the requirements established in the service complaint process

As we have consistently noted in our review of service complaints, the majority of these complaints involve laws, policies, or procedures where there is no employee misconduct; or are complaints where it is determined that MCSO employees are not involved. During this reporting period, 36 (60%) of the 60 closed service complaints did not involve allegations of misconduct. Sixteen (27%) did not involve MCSO employees, six (10%) were closed due to lack of specificity, and two (3%) were closed based on a combination of factors.

In July 2019, we and the Parties approved MCSO's proposal to use an expedited process to handle service complaints where it could be immediately determined that the complaint did not involve MCSO personnel. During this same time period, we discussed concerns we found in some service complaints that were completed at the District level and forwarded to PSB for review and approval, where PSB subsequently determined that a service complaint was inappropriate, and a misconduct investigation should be opened. PSB was again correcting the work of other personnel. To address this concern and ensure accountability, PSB added a signature line to this revised service complaint form. District and Division Command personnel now note their review and approval of service complaints prior to them being forwarded to PSB for a final review.

Consistent with the provisions of policies on internal investigations and discipline, the PSB Commander has had the discretion to determine if internal complaints alleging minor policy violations can be addressed without a formal investigation if certain criteria exist through the use of a coaching. If the PSB Commander makes this determination, it must be documented.

In May 2021, revisions to GH-2 (Internal Investigations) modified the authority of the PSB Commander as it relates to internal complaints that meet certain criteria. The revised policy allows the PSB Commander to address qualifying internal complaints through the use of an approved supervisor-initiated intervention and is no longer limited to only coaching.

During the last reporting period, we reviewed 28 instances where the PSB Commander determined that an internal complaint could be handled with an approved supervisor-initiated intervention. In three of the 28, we believed that the misconduct alleged, or the prior misconduct of the employee, made these incidents ineligible for the PSB Diversion process. We noted during the last reporting period that for ease of tracking, PSB had combined coachings and other approved supervisor-initiated interventions into a single tracking system, referred to as "PSB Diversions." We had no objection to this method of tracking. We also discussed with PSB some concerns we identified with the tracking and documentation of these cases. PSB personnel were responsive to our concerns and assured us that they would provide additional detail and documentation moving forward.

During this reporting period, the PSB Commander did not use his discretion to determine that any internally generated complaint was eligible for the PSB Diversion process. Therefore, no cases were reviewed by our Team.

Compliance with this Paragraph for this reporting period was based on our findings for administrative misconduct investigations (93), and service complaints (68), and PSB diversions and was 99% for this reporting period.

On June 18, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 189.** *The Professional Standards Bureau shall administratively investigate:*

- a. *misconduct allegations of a serious nature, including any allegation that may result in suspension, demotion, or termination; and*
- b. *misconduct indicating apparent criminal conduct by an employee.*

**In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph during this reporting period, we reviewed 93 completed administrative misconduct investigations conducted by MCSO personnel.

Division or District personnel outside of PSB investigated 16 of the 93 administrative misconduct investigations we reviewed during this reporting period. PSB investigators conducted 69 of the investigations, and eight were outsourced to an outside investigator. PSB also submitted five criminal investigations for review. We did not identify any misconduct investigations that a District supervisor conducted where we believe that potential additional misconduct discovered during the initial investigation should have resulted in the investigation being forwarded to PSB for completion and was not.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 190.** *Allegations of employee misconduct that are of a minor nature may be administratively investigated by a trained and qualified Supervisor in the employee's District.*

**In Full and Effective Compliance**

To determine Phase 2 compliance with this Paragraph, we reviewed a total of 98 employee misconduct investigations during this reporting period. Of these, 93 were administrative investigations, and five were criminal investigations. All five of the criminal investigations were conducted by PSB.

Of the 93 administrative misconduct cases we reviewed for this Paragraph, PSB investigators conducted 69. PSB outsourced eight, and 16 were investigated at the District or Division level. We did not identify any instances where a District or Division supervisor conducted any investigation that should have been conducted by PSB.

MCSO has complied with the requirements to train all supervisors who conduct minor misconduct investigations.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 191.** *If at any point during a misconduct investigation an investigating Supervisor outside of the Professional Standards Bureau believes that the principal may have committed misconduct of a serious or criminal nature, he or she shall immediately notify the Professional Standards Bureau, which shall take over the investigation.*

**In Full and Effective Compliance**

To determine Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period. Of the 16 administrative misconduct cases investigated at the District or Division level, we did not identify any cases where we believe that potential serious misconduct was discovered by the investigating supervisor and the supervisor failed to forward the case to PSB.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 192.** *The Professional Standards Bureau shall review, at least semi-annually, all investigations assigned outside the Bureau to determine, among the other matters set forth in ¶ 251 below, whether the investigation is properly categorized, whether the investigation is being properly conducted, and whether appropriate findings have been reached.*

**In Full and Effective Compliance**

PSB command personnel advised us that they continue to review investigations in “real time” as they come into the Bureau. During this reporting period, MCSO provided copies of PSB’s reviews of 18 completed Division-level misconduct investigations that were assigned outside of the Bureau. The review template used by PSB includes sections that address whether or not the investigation is properly categorized, whether the investigation is properly conducted, and whether appropriate findings have been reached. Additionally, copies of emails detailing the quality of the investigation, identified deficiencies, and required edits sent electronically to affected Division Commanders were provided for each case reviewed.

PSB included the information required by this Paragraph in its semi-annual public Misconduct Investigations Report, which is required under Paragraph 251. The most recent report was published on MCSO’s website in August 2022. The report covers the period of July 1-December 31, 2021; and contains an analysis as to whether cases assigned outside of PSB were properly categorized, whether the investigations were properly conducted, and whether appropriate findings have been reached.

MCSO remains in compliance with this Paragraph.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion.

**Paragraph 193.** *When a single act of alleged misconduct would constitute multiple separate policy violations, all applicable policy violations shall be charged, but the most serious policy violation shall be used for determining the category of the offense. Exoneration on the most serious offense does not preclude discipline as to less serious offenses stemming from the same misconduct.*

### **In Full and Effective Compliance**

To determine Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period. Forty-six had sustained allegations against one or more employees. In 28 of these investigations, at least one principal employee was still an MCSO employee at the time the investigation was completed or discipline decisions were made. In all 28, the most serious policy violation was used to determine the final category of the offense for discipline purposes, if more than one policy violation was sustained.

In cases where multiple violations of policy occurred, this information was listed on the preliminary discipline document. There were no cases where the exoneration of any offense precluded discipline for any sustained allegations.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 194.** *The Commander of the Professional Standards Bureau shall ensure that investigations comply with MCSO policy and all requirements of this Order, including those related to training, investigators' disciplinary backgrounds, and conflicts of interest.*

### **Phase 1: In compliance**

- CP-2 (Code of Conduct), most recently amended on April 27, 2022.
- CP-3 (Workplace Professionalism: Discrimination and Harassment), most recently amended on December 16, 2021.
- CP-5 (Truthfulness), most recently amended on March 3, 2022.
- CP-11 (Anti-Retaliation), most recently amended on January 6, 2022.
- GC-16 (Employee Grievance Procedures), most recently amended on December 8, 2021.
- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- Administrative Services Division Operations Manual, most recently amended on November 14, 2022.
- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2: Not in compliance**

We determine Phase 2 compliance with this Paragraph by a review of completed misconduct investigations conducted by MCSO, the review of attendance by internal investigators at required Misconduct Investigative Training, the disciplinary backgrounds of internal investigators, and the efforts being made by the PSB Commander to reach compliance.

We reviewed 93 administrative misconduct investigations, five of which were critical incidents, and five criminal investigations during this reporting period. All five of the criminal investigations complied with MCSO policy and the requirements of the Second Order.

Administrative investigations are required to be completed within 60 days if completed outside of PSB and within 85 days if completed by PSB personnel. Of the 93 investigations reviewed for this reporting period, 24 (26%) were completed within the required timeframes or contained a reasonable extension request that was specific to the investigation, a decrease from 33% during the last reporting period. The remaining investigations continued to identify general justifications including supervisory responsibilities, workload, prioritization of investigations, training, and others.

During our April 2022 site visit, PSB personnel informed us that the average number of days to complete administrative investigations was 611 days, a decrease from 650 days reported in January 2022. During our July 2022 site visit, PSB told us that the overall average days for completion was 562 days, compared to 611 in April 2022. This was the second consecutive quarter where the number of days to complete an investigation had decreased. During our October 2022 site visit, PSB told us that the overall average days to complete an investigation had increased to 588 days. As we have noted in the last nine reporting periods, we no longer accept extensions that do not contain reasonable justifications specific to each investigation.

Of the 93 administrative misconduct cases we reviewed, PSB personnel completed 69. Twenty were conducted by sworn investigators. Forty-one investigations were conducted by Detention investigators and eight were conducted by civilian investigators. We found deficiencies other than extensions in one (1%) of the total 69 investigations. With the inclusion of those investigations that were found noncompliant based on our review of extension requests, 18 (26%) of the 69 investigations conducted by PSB were in overall compliance – a decrease from 33% in the last reporting period.

We reviewed eight investigations that PSB outsourced to an outside investigator. All were outsourced to address the backlog of investigations. Of these, two (25%) were found noncompliant due to investigative concerns. Only one (13%) of the eight was in overall compliance due to timeliness.

Districts or Divisions outside of PSB conducted 16 investigations. Five (31%) were not compliant due to investigative and administrative deficiencies. This is a decrease in noncompliance from the 42% for the last reporting period. With the inclusion of those investigations found not compliant due to timelines, none of the 16 cases were in overall compliance.

As a result of both investigative deficiencies and administrative deficiencies, including those related to extension compliance, overall compliance for all administrative investigations conducted by MCSO that are within the purview of the PSB Commander was 20% for this reporting period, an increase from 28% during the last reporting period.

There are many factors that impact the PSB Commander's ability to determine compliance in all cases. One factor is that the PSB Commander must rely on other PSB staff members to conduct case reviews and ensure proper documentation is completed. We continue to find that PSB personnel are identifying and ensuring that corrections are made and all documentation is completed in those cases they review. In some cases, deficiencies cannot be corrected after the fact.

Another factor affecting the PSB Commander's ability to ensure that all investigations are properly completed is that the Appointing Authority – not the PSB Commander – determines the final findings and discipline. During this reporting period, there was one instance where we disagreed with the Appointing Authority's decision to overturn a PSB finding.

The investigative quality of District and Division cases has continued to have an adverse impact on the ability of the PSB Commander to ensure investigations are properly completed. During the last reporting period, noncompliance for these cases rose from 32% the previous quarter to 48%. During this reporting, noncompliance decreased to 31%. While we note the improvement for this reporting period, District and Division cases have not yet demonstrated sustained improvement. We are hopeful that we will continue to see ongoing improvement over the next reporting period.

Since 2016, PSB has taken a number of actions to address both investigative deficiencies and other concerns with the completion of administrative investigations. We have continued to meet with PSB and District and Division personnel since that time to update them on our identification of training and performance issues that adversely affect compliance with the Second Order. Members of our Team also meet with PSB every two weeks to discuss Class Remedial Matters, and we use this opportunity to discuss other ongoing concerns that affect compliance. In our meetings with PSB and the Parties during site visits, we have also discussed additional opportunities and potential remedies to address the challenges of completing quality investigations within the required timelines. The Parties have also addressed this issue in both the meet-and-confer process and ongoing litigation. The Court appointed an outside expert to examine issues relevant to the deficiencies associated with PSB investigations. The expert's recommendations were reviewed by the Parties and the Court.

In 2014, PSB initiated 717 internal investigations. In 2015, PSB initiated 916 cases: and in 2016, 847 cases. There were 1,028 cases initiated in 2017. In 2018, there were 1,114 investigations initiated. In 2019, PSB initiated a total of 1,072 investigations and in 2020, PSB opened a total of 1204 investigations. In 2021, PSB opened a total of 1172 investigations, a small decrease from 2020.

In 2016, prior to the implementation of the Court's Second Order, PSB investigators were carrying an average active caseload of 12-16 cases each month. By the end of 2021, the average monthly caseload in PSB was 74 cases per investigator. The average days to complete an

administrative investigation in PSB at the end of 2021 was 704 days. For investigations completed outside of PSB, the average number of days to complete an investigation was 439 days. These numbers have continued to grow since the implementation of the Second Order.

At the end of 2020, there were 2,010 pending investigations – an increase from 1,617 at the end of 2019. By the end of 2021, the number of pending investigations had increased to 2,149. While the total included administrative misconduct investigations, service complaints, criminal investigations, and critical incident investigations, the majority continued to be administrative misconduct investigations and service complaints. Of the 1,903 administrative misconduct investigations pending at the end of 2021, 1,769 (93%) were assigned to PSB, an increase from 1,561 at the end of 2020. Of the 179 pending service complaints, 114 were assigned to PSB. This was a decrease from the number of pending service complaints from 2020 and likely a result of the addition of a second civilian investigator in PSB to address these complaints. All five of the pending criminal investigations, and all 62 of the pending critical incident investigations were assigned to PSB. In total, 1,950 (91%) of the pending 2,149 investigations were being investigated by PSB at the end of 2021. MCSO closed a total of 995 investigations in 2020, compared to 727 in 2019. We noted, however, that the increase in closures in 2020 was primarily a result of an increase in service complaint closures, not administrative misconduct investigations. MCSO closed a total of 1,021 cases in 2021, an increase from the 995 closed in 2020. Administrative misconduct investigation closure increased from 364 in 2020 to 430 in 2021. Service complaint closures still accounted for more than half of the total closures.

During our April 2022 site visit, PSB advised that the Bureau had initiated 226 cases in 2022. Of these, 115 were administrative misconduct investigations. The number of all pending cases had decreased slightly since the 2,149 cases noted at the end of 2021. Of the 2,086 pending cases reported in April 2022, 1,908 were administrative misconduct investigations. Of these 1,908, 1,790 were assigned to PSB for completion. PSB also had 63 critical incidents, 65 service complaints and nine criminal cases assigned for investigation. Of the total 2,086 pending cases, 1,927 (92%) were being handled by PSB. Only 159 cases were being conducted by a District or Division outside of PSB. Of these 159, 118 were administrative misconduct investigations and 41 were service complaints.

During our July 2022 site visit, PSB personnel advised that the Bureau had initiated 260 investigations during the reporting period. Of these, 161 were administrative misconduct investigations. The number of all pending cases increased from 2,086 in March of 2022 to 2,137 in June of 2022. Of the total pending cases, 1,956 were administrative misconduct investigations, 1,859 (95%) of which were assigned to PSB. PSB also had 73 pending critical incidents, 78 service complaints, and 11 criminal cases assigned for investigation. Of the total 2,137 investigations, only 116 (5%) were assigned to a District or Division outside of PSB. The percentage of all cases being investigated by PSB increased from 92% to 95% during this quarter.

During our October 2022 site visit, PSB advised that the Bureau had initiated another 291 investigations between July 1-September 20, 2022. Of these, 187 were administrative misconduct investigations. The number of all pending cases increased from 2,086 at the end of the June 2022, to 2,251 at the end of September 2022. Of the total pending cases, 2,048 were administrative misconduct investigations, 1,924 of which were assigned to PSB. PSB also had 88 pending

critical incidents, 85 service complaints, and 13 criminal cases assigned for investigation. Forty-eight investigations were being investigated by an outside vendor. Of the total 2,251 pending investigations, only 76 administrative misconduct investigations and 17 service complaints – a combined 4% of the total – were being investigated by Districts or Divisions outside of PSB,

PSB was authorized 12 new positions in the July 2018 budget. The positions included both sworn and Detention personnel. Between July 2018 and January 2021, only one of these positions, a Detention supervisor, was filled. One lieutenant position was also eliminated, and the funds were transferred to other purposes in PSB. By the end of 2021, there were still six remaining positions that were not filled. The funds for the remaining five positions had been used to hire civilian investigators and administrative personnel.

PSB was authorized eight new positions – all civilian – in the July 2019 budget. Those positions were all filled and included three civilian investigators along with administrative staff. MCSO did not request any new positions for PSB in either the July 2020 or the July 2021 budget process.

During our January 2022 remote site visit, PSB personnel informed us that they had six civilian investigators and were in the process of filling the two open administrative positions. The PSB Commander advised us that they had filled two of the open sworn investigators' positions, but that ongoing retirements and transfers continued to cause the overall filled position numbers to fluctuate. During our April 2022 site visit, PSB advised us that, despite filling some positions, the Bureau still had nine vacancies as a result of transfers, retirements, and promotions.

The original budget authorization for PSB in 2018 included two sworn lieutenants, six sworn sergeant positions, and four Detention sergeant positions. To determine the final status of these budget allocations, we requested specific information on each of these authorized positions at our July 2022 site visit meeting. PSB personnel advised us that one sworn lieutenant position was filled, and one was converted to fill other PSB positions in 2020. Two of the sworn sergeant positions were filled, two were converted to other PSB positions in 2021, and two were vacant. All four of the Detention sergeant positions have been filled. Of the total 12 positions, only two sworn sergeant positions remained unfilled. There also continued to be other vacancies in PSB as a result of ongoing promotions, transfers, and retirements.

During our October 2022 site visit, PSB advised their authorized staff included 59 employees. Of these, a total of 33 were designated as investigative personnel; 12 sworn investigators, 15 detention investigators, and six civilian investigators. PSB was also in the process of hiring additional civilian investigators.

During our past site visits, PSB staff have continued to communicate that they are outsourcing those cases where conflicts of interest exist. PSB had contracted with a qualified private vendor to conduct these investigations. During our January 2021 remote site visit, PSB personnel advised us that they were considering retaining additional outside contract investigators but had not identified any who met the hiring criteria. PSB was also considering outsourcing additional investigations to the current contract investigator if he had the staff to accept additional investigations. During our April 2021 site visit, PSB personnel advised us that they had identified another vendor and outsourced 25 cases to this entity as a pilot program.

During our October 2021 remote site visit, PSB personnel informed us that PSB had outsourced one additional case to the current contract investigator. Four investigations by this investigator were completed and forwarded to us for review during the reporting period. This investigator had 21 cases still in progress. Of the 25 cases outsourced to the new vendor, eight had been completed. The PSB Commander advised us that, overall, they were pleased with the quality of the investigations, though there were still some issues to address involving structure, format, and Court Order requirements. We reviewed seven of these investigations during the last reporting period and identified a number of concerns with the investigations that we have since discussed with PSB.

During our January 2022 site visit, PSB advised that the original contract vendor currently had 20 cases pending. The second vendor had 11 cases pending. No additional cases were outsourced during the reporting period.

During our April 2022 site visit, PSB advised that the original contract investigator had 18 pending cases. Two of the cases being handled by this contractor had been transferred to the second vendor PSB is using. No new investigations were outsourced to the original contractor. No new cases were assigned to the second vendor during the reporting period, but we did review four investigations they had completed.

During our July 2022 site visit, PSB advised that the original contract investigator continued to have 18 pending cases. Again, none were completed and forwarded for our review during the reporting period. No new investigations were outsourced to this, or any other vendor, due to the identification of any potential conflict of interest. The second vendor hired by MCSO has had a total of 38 investigations assigned for completion. Of those, 23 have been completed; 15 remain pending. We reviewed five investigations conducted by this vendor during this reporting period.

During our October 2022 site visit, PSB advised that the original contract investigator continued to have 18 pending investigations. Again, none were completed and forwarded for review. PSB advised they would be following up with this investigator to get a better sense of the status of these investigations. PSB outsourced an additional 22 investigations to the second contract vendor during this reporting period. They now have 30 open cases. Eight cases outsourced to this vendor were completed and forwarded for our review during this reporting period.

After the Second Order was implemented, PSB reviewed the disciplinary backgrounds of all those who might conduct internal investigations and notified us of those supervisors who would be prohibited from conducting such investigations due to their backgrounds. At that time, MCSO identified two supervisors who were ineligible to conduct internal investigations. Neither of these two employees are still employed at MCSO. MCSO has since identified additional supervisors who are ineligible to conduct administrative investigations, and there are two current supervisors who remain on this list.

MCSO reported during this reporting period that no additional supervisors were determined to be ineligible to conduct administrative misconduct investigations.

**Paragraph 195.** *Within six months of the entry of this Order, the Professional Standards Bureau shall include sufficient trained personnel to fulfill the requirements of this Order.*

**Phase 1:** In compliance

- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2:** Not in compliance

In conjunction with this Paragraph, Paragraph 178 mandates that within three months of the finalization of policies consistent with Paragraph 165, all PSB personnel would receive 40 hours of comprehensive training. Paragraph 178 requires training of all supervisors within three months of the finalization of policies, and further requires sufficient trained personnel in PSB within six months of the entry of the Order. The first week of the required Misconduct Investigative Training commenced on September 18, 2017, and the training was completed prior to the end of 2017.

In October 2018, PSB personnel advised us that a total of 11 additional sworn and Detention personnel had been approved for PSB in the July 2018 MCSO budget. They did not, however, believe the positions would be filled until sometime in 2019 due to ongoing staffing shortages throughout the agency. During our April 2019 site visit, PSB informed us that even if those positions were filled, the Bureau would still be insufficiently staffed to meet its responsibilities. By the end of 2021, six of these 11 positions were still unfilled. Five had been converted to civilian positions and filled.

In October 2019, PSB advised us that eight civilian positions had been approved for PSB in the July 2019 budget. By the end of 2021, all of these positions had been filled.

During our October 2020 remote site visit, PSB advised us that no additional requests for PSB staffing were made for the July 2020 fiscal year. In October 2021, we learned that no new positions had been requested for the July 2021 budget year.

Between 2016 and 2021, the number of investigators assigned to PSB remained between 24 and 26 – despite an increase in initiated cases that grew from 847 in 2016 to 1,072 in 2021; a growing backload of cases; and an average investigator monthly caseload that had grown from 12 cases to 74 cases.

In January 2022, PSB reported that with the addition of the three additional civilian investigators, they had a total of 29 investigators, though they continued to have some ongoing vacancies due to promotions, transfers, and retirements. During our April 2022 site visit, PSB advised that the Bureau had made some staffing reassignments and had a total of 32 investigators, including 11 sworn, 15 Detention, and six civilian.

During our July 2022 site visit, PSB advised us that they had a total of 33 investigators authorized, including 12 sworn, 15 detention, and six civilian. While the total number of investigators had increased from 29 in January 2022 to 33 in July 2022, the number still remained insufficient to meet PSB's responsibilities.

During our October 2022 site visit, PSB advised that the Bureau's total number of authorized investigators remained at 33: 12 sworn, 15 Detention, and six civilian. They further advised that they were in the process of attempting to fill vacancies and hiring additional civilian investigators. As we have continued to note each quarter, the number of investigators has remained insufficient to meet PSB's responsibilities.

The Second Order requires that PSB have "sufficient trained personnel to fulfill the requirements of this Order." MCSO has delivered the required Misconduct Investigative Training, and our focus remains on the ability of PSB staff to carry out its mission. As documented in this and previous reports, PSB, in its command's estimation, is understaffed. We will not find MCSO in compliance with this Paragraph until MCSO addresses PSB's staffing issues.

*Paragraph 196. Where appropriate to ensure the fact and appearance of impartiality, the Commander of the Professional Standards Bureau or the Chief Deputy may refer administrative misconduct investigations to another law enforcement agency or may retain a qualified outside investigator to conduct the investigation. Any outside investigator retained by the MCSO must possess the requisite background and level of experience of Internal Affairs investigators and must be free of any actual or perceived conflicts of interest.*

### **In Full and Effective Compliance**

During our April 2017 site visit, the PSB Commander indicated that MCSO had not envisioned any need to retain additional contract investigators beyond the one investigator that had been already retained. A member of PSB's staff serves as MCSO's single point-of-contact to liaise and assist with scheduling for the contract investigator. The contract investigator advances the investigations to the level of recommending findings.

During our January 2021 remote site visit, PSB personnel advised us that they could outsource additional investigations to the current contract investigator if he had additional staff. MCSO was discussing this possibility with the investigator. Additionally, MCSO had issued Requests for Proposals (RFPs) in an attempt to identify additional contract investigators; but had not been able to identify any who met the criteria for hiring.

During our April 2021 remote site visit, PSB personnel advised us that PSB outsourced an additional four cases to the current contract investigator during the reporting period. The contract investigator had 24 cases in progress. Twenty-five administrative misconduct cases were also outsourced to another outside firm in what was described as a "pilot" program by PSB.

During our October 2021 remote site visit, PSB personnel advised that the Bureau had outsourced one additional case to the original contract investigator. The investigator had 21 pending cases. This investigator had considered adding additional staff to allow him to accept additional cases from MCSO, but had decided not to proceed in that direction.

Of the 25 cases outsourced to the firm hired by MCSO in the pilot program, eight had been completed and finalized. An additional five had been completed by the investigator and returned to MCSO for review and finalization. The additional cases being investigated by this firm were still in progress. The PSB Commander said that overall, the Bureau was satisfied with the quality

of the investigations and found them to be completed in an objective manner. He did note that there were some “growing pains” with structure, format, and Court Order requirements that PSB staff were addressing. In our initial reviews of investigations outsourced to this new vendor, we found multiple cases with investigative deficiencies. We addressed these concerns with PSB.

During our January 2022 site visit, PSB personnel advised us that the Bureau had not outsourced any additional investigations during the reporting period. There were no investigations submitted for our review by the original outside contractor. We reviewed seven investigations conducted by the new outside vendor during the reporting period. We did note improvement in the investigative quality in these seven cases. Only one of the seven was noncompliant due to an investigative concern. None were compliant with the required timelines.

During our April 2022 site visit, PSB personnel advised that no additional investigations had been outsourced to any vendor during this reporting period. They were transferring two cases from the original contract vendor to the second vendor. We reviewed four cases investigated by the second vendor during the reporting period. One of the four had investigative deficiencies. None of the four were completed within the required timelines. The PSB Commander advised us during our site visit that the Bureau intended to outsource additional cases to the second vendor; a new contract was pending.

During our July 2022 site visit, PSB personnel advised us that no investigations had been outsourced to any outside vendor due to an identified conflict of interest during the reporting period. The original outside vendor had 18 investigations in progress. None were completed and forwarded for our review during the reporting period. The second outside vendor had been assigned a total of 38 cases for investigation as of the end of June 2022. Twenty-three of these had been completed. Five were forwarded for our review during the reporting period.

During our October 2022 site visit, PSB advised us that no investigations had been outsourced to any outside vendor due to an identified conflict of interest during this reporting period. Twenty-two had been outsourced to the second vendor being used by MCSO to assist with reduction of the backlog of cases and they now have a total of 30 cases in progress. The original vendor has 18 pending investigations. None were completed or forwarded for our review during this reporting period, nor has there been any completed for multiple reporting periods. PSB will be following up with this vendor to get a better sense of the status of these cases. We did receive and review eight cases that were completed by the second vendor being used by MCSO.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 197.** *The Professional Standards Bureau will be headed by a qualified Commander. The Commander of the Professional Standards Bureau will have ultimate authority within the MCSO for reaching the findings of investigations and preliminarily determining any discipline to be imposed. If the Sheriff declines to designate a qualified Commander of the Professional Standards Bureau, the Court will designate a qualified candidate, which may be a Civilian Director in lieu of a sworn officer.*

**Phase 1:** In compliance

- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- Administrative Services Division Operations Manual, most recently amended on November 14, 2022.
- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2:** In compliance

In January 2018, MCSO advised that due to reorganizations within the Office, the responsibility to serve as the PSB Commander for purposes of compliance with this Order would be transferred to a captain within PSB. The PSB Deputy Chief, who previously had this responsibility was promoted, but would maintain overall oversight of PSB as an Executive Chief.

During this reporting period, we have continued to have numerous opportunities to interact with the Captain now serving as the PSB Commander. In addition to our regularly scheduled meetings to discuss CRMs and other internal affairs matters, we have had additional meetings to discuss overall concerns with investigations, case specific concerns, and concerns with PSB processes and protocols when appropriate. The Captain continues to be responsive to our input regarding PSB investigations and processes. He continues to discuss with us both his immediate priorities and his continuing efforts to improve where necessary. In those cases where we have expressed concerns or requested information, he has provided timely responses.

Again, during this reporting period we noted that the PSB Commander continues to ensure older cases, some initiated as far back as 2016, are resolved. While the time delays in completing these investigations do have an adverse impact on compliance, particularly adherence to timelines, we agree that these cases must be completed. We continue to be hopeful that as PSB is able to resolve more of the older cases, compliance moving forward will improve.

During our April 2022 site visit, the PSB Commander informed us that he had made additional staffing adjustments resulting in additional personnel being focused on investigations rather than on intake or reviews. He also advised us that he had, at least temporarily, stopped sending cases to Districts and Divisions for investigation. He noted that he was “giving them a break” and he believed this might have a positive impact on the PSB workload because it would eliminate the need to review these outside cases and, where necessary, return them for additional investigation, or making corrections to the cases in PSB. When asked, he said they might continue this process and that would be determined in the future.

During our site visit meeting in July 2022, the PSB Commander told us that the Bureau had continued its practice of not assigning any administrative misconduct investigations to personnel outside of PSB. PSB still considered this to be a temporary practice and had made no decision about making it permanent. We understood the action being taken regarding the investigation of cases, but continued to have serious concerns about both the short- and long-term effects of doing all investigations in PSB. Most importantly, we believed this action reduced the accountability of field supervisors and negated multiple years of field supervisors gaining experience on how to properly conduct investigations. PSB was now completing 95% of all investigations, an increase from 92% reported during the last reporting period, without adequate personnel to do so. For multiple reporting periods, the Deputy Chiefs for the Districts had taken the position that using a single investigator in each District to conduct investigations would result in overall better field investigations and would create a pool of qualified supervisors for assignment to PSB. We continued to believe that all field supervisors should be able to conduct a misconduct investigation. If PSB conducts all investigations, it effectively negates the advantages put forward by the Deputy Chiefs; and over time there would be fewer supervisors outside of PSB with the appropriate knowledge and experience in how to conduct investigations. We again urged PSB to consider both the short- and long-term adverse impacts of having only PSB investigators conduct investigation.

During our October 2022 site visit, the PSB Commander informed us he had developed a strategic plan to enhance the efficiency of PSB operations, implemented an updated intake process, and created a fast-track investigative process for those investigations that could be resolved without a significant amount of investigative time. We continue to note his ongoing efforts to streamline processes in PSB while still ensuring that quality investigations are conducted. The PSB Commander also advised us that the Bureau has been continuing its practice of not assigning any administrative misconduct investigations to personnel outside of PSB. As we have noted for the past two quarters, we believe that this practice has both short- and long-term adverse impacts; and we continue to disagree with this decision.

**Paragraph 198.** *To promote independence and the confidentiality of investigations, the Professional Standards Bureau shall be physically located in a facility that is separate from other MCSO facilities, such as a professional office building or commercial retail space. This facility shall be easily accessible to the public, present a non-intimidating atmosphere, and have sufficient space and personnel for receiving members of the public and for permitting them to file complaints.*

#### **In Full and Effective Compliance**

In May 2018, PSB moved into the first and second floors of 101 West Jefferson Street. PSB's address is available on the comment and complaint form that is accessible to the public at the Districts and on MCSO's website. PSB's criminal investigators are housed on the first floor, and administrative investigators are housed on the second floor of the building. PSB's off-site facility has two dedicated security personnel assigned during normal business hours of 8:00 a.m.-4:00 p.m., Monday-Friday. MCSO remains in compliance with this requirement.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 199.** *The MCSO will ensure that the qualifications for service as an internal affairs investigator shall be clearly defined and that anyone tasked with investigating employee misconduct possesses excellent investigative skills, a reputation for integrity, the ability to write clear reports, and the ability to be fair and objective in determining whether an employee committed misconduct. Employees with a history of multiple sustained misconduct allegations, or one sustained allegation of a Category 6 or Category 7 offense from MCSO's disciplinary matrices, will be presumptively ineligible to conduct misconduct investigations. Employees with a history of conducting deficient investigations will also be presumptively ineligible for these duties.*

#### **In Full and Effective Compliance**

GH-2 reflects the directive of this Paragraph, to ensure that only supervisors who meet the criteria established by this Paragraph are assigned misconduct investigations. The PSB Operations Manual, which formalizes the review process, states that if any supervisor is deemed ineligible, the PSB commander will notify the supervisor's commander in writing, and will ensure that a BlueTeam entry is made to memorialize the supervisor's ineligibility to conduct misconduct investigations. A record of supervisors deemed ineligible to conduct misconduct investigations is maintained in PSB. These procedures were finalized and documented in the PSB Operations Manual, published on December 13, 2018. For the third quarter of 2022, there were no additional supervisors added to the list of personnel who are ineligible to conduct misconduct investigations. There were no investigators transferred into PSB during the third quarter.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 200.** *In each misconduct investigation, investigators shall:*

- a. conduct investigations in a rigorous and impartial manner designed to determine the facts;*
- b. approach investigations without prejudging the facts and without permitting any preconceived impression of the principal or any witness to cloud the investigation;*
- c. identify, collect, and consider all relevant circumstantial, direct, and physical evidence, including any audio or video recordings;*
- d. make reasonable attempts to locate and interview all witnesses, including civilian witnesses;*
- e. make reasonable attempts to interview any civilian complainant in person;*
- f. audio and video record all interviews;*
- g. when conducting interviews, avoid asking leading questions and questions that may suggest justifications for the alleged misconduct;*
- h. make credibility determinations, as appropriate; and*
- i. attempt to resolve material inconsistencies between employee, complainant, and witness statements.*

### **In Full and Effective Compliance**

To determine Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period. All but one was initiated and completed after the new IA and discipline policies became effective in May 2017. PSB investigated 69 of the cases, eight were outsourced, and District or Division supervisory personnel investigated 16 of the cases. Of the cases we reviewed, 61 involved external complaints, and 32 were internally generated.

Paragraph 200.a. requires that misconduct investigations be conducted in a rigorous and impartial manner. During the last reporting period, two completed investigations that we reviewed failed to comply with the requirements of this Subparagraph. During this reporting period, three investigations (2%) fell short of compliance with this Subparagraph.

Paragraph 200.b. requires that investigations be approached without prejudging the facts or permitting preconceived impressions. During this and the last reporting period, all completed investigations we reviewed again complied with the requirements of this Subparagraph.

Paragraph 200.c. requires that investigators identify, collect, and consider all relevant evidence. During the last reporting period, all completed investigations we reviewed complied with the requirements of this Subparagraph. During this and the last reporting period, all completed investigations we reviewed again complied with the requirements of this Subparagraph.

Paragraph 200.d. requires that investigators make reasonable attempts to locate and interview all witnesses. During this and the last reporting period, all investigations we reviewed complied with the requirements of this Subparagraph.

Paragraph 200.e. requires that investigators make reasonable attempts to interview civilian complainants in person. During this and previous reporting periods, there have been numerous investigations in which investigators did not make attempts to interview complainants in person. The majority have been consistently attributed to concerns related to COVID-19, and appropriate documentation has been completed. We did not identify any investigations during this reporting period where PSB did not make any attempts to conduct an in-person interview; and no explanation was provided for not doing so. PSB discontinued the authorization to conduct telephone interviews based on COVID restrictions, effective May 1, 2022.

Paragraph 200.f. requires audio- and video-recording of all interviews. Of the 93 administrative investigations reviewed for this reporting period, there were 22 cases where interviews were not both audio- and video-recorded. Seven were the result of COVID-19 restrictions. The remaining 15 were a result of complainants who were located out of state or preferred a telephone interview.

Paragraph 200.g. requires that when conducting interviews, investigators avoid asking leading questions or questions that may suggest justification for the alleged misconduct. During the last reporting period, three investigations (3%) fell short of compliance with this Subparagraph. During this reporting period, two investigations (2%) fell short of compliance with this Subparagraph.

Paragraph 200.h. requires that proper credibility determinations be made. During the last reporting period, one investigation (1%) fell short of compliance with this Subparagraph. During this reporting period, all investigations we reviewed complied with the requirements of this Subparagraph.

Paragraph 200.i. requires that investigators attempt to resolve all material inconsistencies. During the last reporting period, one investigation (1%) fell short of compliance with this Subparagraph. During this reporting period, all investigations we reviewed complied with the requirements of this Subparagraph.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion.

***Paragraph 201.*** *There will be no automatic preference for an employee's statement over a non-employee's statement. Internal affairs investigators will not disregard a witness's statement solely because the witness has some connection to either the complainant or the employee or because the witness or complainant has a criminal history, but may consider the witness's criminal history or any adjudicated findings of untruthfulness in evaluating that witness's statement. In conducting the investigation, internal affairs investigators may take into account the record of any witness, complainant, or officer who has been determined to have been deceptive or untruthful in any legal proceeding, misconduct investigation, or other investigation.*

### **In Full and Effective Compliance**

To determine Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period.

Of the 93 investigations, 61 involved complainants that were not identified as MCSO employees. Thirty of the investigations included interviews with witnesses or investigative leads who were not MCSO employees. We did not identify any case where we believe there was an automatic preference for the statement of an employee over a non-employee's statement.

We did not identify any completed investigations where a witness's statement was disregarded solely because of any connection identified in this Paragraph, nor where a witness's criminal history or findings of truthfulness were considered.

On December 23, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 202.** Internal affairs investigators will investigate any evidence of potential misconduct uncovered during the course of the investigation, regardless of whether the potential misconduct was part of the original allegation.*

#### **In Full and Effective Compliance**

To determine Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period. In 15 of the 93 investigations, MCSO identified additional potential misconduct during the investigations and properly added additional allegations, initiated new investigations, or addressed the violations with an appropriate supervisor intervention. We identified two investigations (2%) during this reporting period where we believe that additional misconduct may have occurred and was not addressed by MCSO.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion.

***Paragraph 203.** If the person involved in the encounter with the MCSO pleads guilty or is found guilty of an offense, internal affairs investigators will not consider that information alone to be determinative of whether an MCSO employee engaged in misconduct, nor will it by itself justify discontinuing the investigation. MCSO training materials and policies on internal investigations will acknowledge explicitly that the fact of a criminal conviction related to the administrative investigation is not determinative of whether an MCSO employee engaged in misconduct and that the mission of an internal affairs investigator is to determine whether any misconduct occurred.*

#### **In Full and Effective Compliance**

To determine Phase 2 compliance with this Paragraph, we reviewed administrative misconduct investigations during this reporting period.

There were no indications in any of the completed investigations we reviewed that any MCSO investigators considered alone any pleading or finding of guilty by any person as a reason to make any determination regarding the potential misconduct of any MCSO personnel, nor were any investigations discontinued for this reason.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 204.** *Internal affairs investigators will complete their administrative investigations within 85 calendar days of the initiation of the investigation (60 calendar days if within a Division). Any request for an extension of time must be approved in writing by the Commander of the Professional Standards Bureau. Reasonable requests for extensions of time may be granted.*

**Phase 1:** In compliance

- GH-2 (Internal Investigations), most recently amended on October 25, 2022.

**Phase 2:** Not in compliance

To determine Phase 2 compliance with this Paragraph, we review administrative misconduct investigations conducted by MCSO.

PSB conducted 69 of the 93 administrative misconduct investigations we reviewed for this reporting period. Twenty-two (32%) of the 69 were completed within the required 85-day timeframe or had an approved extension for a reason specific to the investigation, a decrease from 38% for the last reporting period. Eight investigations had been outsourced to an outside entity by PSB. Two (25%) were completed within the required timeframe or had an acceptable extension justification, an increase from 20% during the last reporting period.

Of the 16 investigations completed by Districts and Divisions outside of PSB, none were initially submitted to PSB within the required timeframe or had an acceptable extension justification, a decrease in compliance from 16% the last reporting period. As has been our practice for numerous reporting periods, we determine the 60-day period compliance findings for those investigations conducted by personnel outside of PSB based on the original date the investigation is approved by the District or Division Commander and forwarded to PSB. In those cases where deficiencies are identified, the cases will continue to be found noncompliant in other relevant Paragraphs, and specifically in Paragraph 213, which requires the District or Division Commander ensure that investigations conducted by their personnel are complete and the findings are supported by the evidence prior to their submittal to PSB.

As we noted in Paragraph 194, timely completion of administrative investigations has continued to be of concern for many reporting periods. Of the 93 administrative misconduct investigations we reviewed during this reporting period, 24 investigations (26%) were completed and submitted by the investigator within the required 60- or 85-day timeframe or contained an acceptable extension request and approval. This is a decrease in compliance from 33% during the last reporting period.

In addition to those investigations not completed within 60 or 85 days as required by this Paragraph, of the 93 total investigations, 62 (67%) were not completed within 180 days and did not have an acceptable extension request or approval. This is the same noncompliance percentage as the last reporting period.

During our October 2022 site visit, PSB advised that the average time for full closure of administrative investigations was 588 days, a slight increase from the 562 days reported during our July 2022 site visit. As we have noted in our last nine quarterly status reports, we no longer accept workload as the justification for the failure to complete investigations in a timely manner. The time it takes to conduct and close investigations remains unacceptable and it is the agency that bears the responsibility to address this issue with decisive action.

MCSO is not in Phase 2 compliance for this Paragraph.

***Paragraph 205.** The Professional Standards Bureau shall maintain a database to track all ongoing misconduct cases, and shall generate alerts to the responsible investigator and his or her Supervisor and the Commander of the Professional Standards Bureau when deadlines are not met.*

**Phase 1:** In compliance

- GC-16 (Employee Grievance Procedures), most recently amended on December 8, 2021.
- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- GH-5 (Early Identification System), most recently amended on December 16, 2021.
- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2:** In compliance

We determine compliance with this Paragraph by assigning a member of our Team to observe demonstrations of the IAPro database during our site visits or other meetings with PSB throughout the reporting period. The IAPro technology serves as the centralized electronic numbering and tracking system for all allegations of misconduct, whether internally discovered or based on an external complaint. This database contains the capacity to manage and store information required for compliance with this Paragraph.

During our site visits, we have met with PSB personnel on numerous occasions and observed IAPro to ensure that the system generates appropriate alerts to responsible investigators and PSB commanders if deadlines are not met. We have reviewed emails PSB disseminates each month to Districts and Divisions to identify investigative deadlines. We have also reviewed the BlueTeam Dashboard, which uses a color-coded system to identify investigations that are nearing deadlines or are past deadlines. The information appears in each supervisor's BlueTeam account when they are monitoring open cases.

The civilian PSB Special Projects Manager is primarily responsible for administering the centralized tracking system. In addition, all PSB and Division investigators can access the electronic BlueTeam database – a system that integrates with IAPro – at any time to view the assignment and status of administrative investigations. PSB has also trained two lieutenants to administer the system.

In May 2018, PSB relocated to an offsite location. In July 2018, a member of our Team verified that the existing tracking mechanisms continue to be used for the tracking of investigations at the new facility.

During our January, July, and October 2019 site visits, a member of our Team verified that the tracking mechanisms remain in place. We also continued to receive monthly notifications from PSB regarding closed administrative investigations, and we evaluate these closed investigations for the entirety of a reporting period against a multitude of criteria, including whether the cases were completed in a timely fashion.

During this reporting period, we continued to receive monthly notifications from PSB regarding closed administrative misconduct investigations; and we continue to evaluate these closed investigations for the entirety of a reporting period against a multitude of criteria, including whether the cases were completed in a timely fashion. (See Paragraph 204.)

**Paragraph 206.** *At the conclusion of each investigation, internal affairs investigators will prepare an investigation report. The report will include:*

- a. *a narrative description of the incident;*
- b. *documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report will specifically state this fact. In situations in which witnesses were present but circumstances prevented the internal affairs investigator from determining the identification, phone number, or address of those witnesses, the report will state the reasons why. The report will also include all available identifying information for anyone who refuses to provide a statement;*
- c. *documentation of whether employees were interviewed, and a transcript or recording of those interviews;*
- d. *the names of all other MCSO employees who witnessed the incident;*
- e. *the internal affairs investigator's evaluation of the incident, based on his or her review of the evidence gathered, including a determination of whether the employee's actions appear to be within MCSO policy, procedure, regulations, orders, or other standards of conduct required of MCSO employees;*
- f. *in cases where the MCSO asserts that material inconsistencies were resolved, explicit credibility findings, including a precise description of the evidence that supports or detracts from the person's credibility;*

- g. in cases where material inconsistencies must be resolved between complainant, employee, and witness statements, explicit resolution of the inconsistencies, including a precise description of the evidence relied upon to resolve the inconsistencies;*
- h. an assessment of the incident for policy, training, tactical, or equipment concerns, including any recommendations for how those concerns will be addressed;*
- i. if a weapon was used, documentation that the employee's certification and training for the weapon were current; and*
- j. documentation of recommendations for initiation of the disciplinary process; and*
- k. in the instance of an externally generated complaint, documentation of all contacts and updates with the complainant.*

### **In Full and Effective Compliance**

Paragraph 206.a. requires a written description on the incident be included in the investigative report. All completed investigations that we reviewed complied with the requirements of this Subparagraph.

Paragraph 206.b. requires documentation of evidence gathered, including all known information about witnesses. All completed investigations that we reviewed complied with the requirements of this Subparagraph.

Paragraph 206.c. requires documentation of whether employees were interviewed, and a transcript or recording of these interviews. All completed investigations that we reviewed complied with the requirements of this Subparagraph.

Paragraph 206.d. requires that the names of all MCSO employees who witnessed the incident be included in the report. All completed investigations we reviewed complied with the requirements of this Subparagraph.

Paragraph 206.e. requires that the internal affairs investigator's evaluation of the incident includes a determination of whether the employee's actions appear to be within MCSO policy, procedure, regulations, orders, or other standards of conduct required of MCSO employees. All completed investigations that we reviewed complied with the requirements of this Subparagraph.

Paragraph 206.f. requires that when MCSO asserts that material inconsistencies were resolved, explicit credibility findings, including a precise description of the evidence that supports or detracts from the person's credibility must be provided. During this reporting period, we did not identify any investigation where we believe MCSO failed to provide sufficient credibility assessments as required. We continue to meet with PSB Command staff to discuss the importance of continuing to clearly identify these requirements in investigative reports and will continue to closely monitor compliance with this Subparagraph.

Paragraph 206.g. requires that when material inconsistencies must be resolved, a precise description of the evidence be included in the report. During this reporting period, we did not identify any investigations where we believe material inconsistencies were not properly resolved when it was possible to do so. We continue to meet with PSB Command staff to discuss the ongoing importance of clearly identifying these requirements in investigative reports and will continue to closely monitor compliance with this Subparagraph.

Paragraph 206.h. requires that assessment of the incident for policy, training, tactical, or equipment concerns be included in the investigative report, to include any recommendations. All of the completed investigations that we reviewed complied with the requirements of this Subparagraph.

Paragraph 206.i. requires that if a weapon was used, documentation that the employee's certification and training for the weapon must be included in the investigative written report. All of the completed investigations we reviewed complied with the requirements of this Subparagraph.

Paragraph 206.j. requires that documentation of the initiation of the disciplinary process be included in the investigation. Compliance is achieved when the misconduct investigator completes the investigation with a finding of sustained, when applicable, and the PSB Commander subsequently approves the finding. This is considered the initiation of the disciplinary process. Twenty-eight of the 93 administrative misconduct investigations we reviewed had sustained findings against one or more active MCSO employee. All complied with the requirements of this Subparagraph.

Paragraph 206.k. requires that any contacts and updates with the complainant be documented in the investigative report. We did not identify any instances during this reporting period where this did not occur.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion.

***Paragraph 207.*** *In assessing the incident for policy, training, tactical, or equipment concerns, investigation reports will include an assessment of whether:*

- a. the law enforcement action was in compliance with training and legal standards;*
- b. the use of different tactics should or could have been employed;*
- c. the incident indicates a need for additional training, counseling, or other non-disciplinary corrective actions; and*
- d. the incident suggests that the MCSO should revise its policies, strategies, tactics, or training.*

**Phase 1:** In compliance

- GH-2 (Internal Investigations), most recently amended on October 25, 2022.

- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2:** In compliance

During this reporting period, we reviewed 93 administrative misconduct investigations. MCSO properly assessed and documented whether any of the requirements of this Paragraph were relevant in all of the completed cases we reviewed for this reporting period. MCSO identified 13 cases where action related to this Paragraph was appropriate; and addressed the concerns with memos of concern, additional training, or where appropriate, policy review.

PSB continues to use an internal tracking form to ensure that those concerns that are forwarded to other Divisions within MCSO for action or review are addressed. We receive and review this tracking document each month. During the last two reporting periods, we continued to report that there were numerous pending concerns that needed to be addressed, many of which were related to policy review or other administrative concerns. During this reporting period, we again found that many of the concerns – which continue to involve policy review, equipment, or procedural issues – continue to show that many matters are still pending, in some cases for several years. MCSO must make additional effort to resolve these concerns. We also continue to note during this reporting period that there are also pending concerns that involve specific employees. We will again address these issues with MCSO during our next site visit.

***Paragraph 208.*** For each allegation of misconduct, internal affairs investigators shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:

- a. “Unfounded,” where the investigation determines, by clear and convincing evidence, that the allegation was false or not supported by fact;
- b. “Sustained,” where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did occur and justifies a reasonable conclusion of a policy violation;
- c. “Not Sustained,” where the investigation determines that there is insufficient evidence to prove or disprove the allegation; or
- d. “Exonerated,” where the investigation determines that the alleged conduct did occur but did not violate MCSO policies, procedures, or training.

**Phase 1:** In compliance

- GH-2 (Internal Investigations), most recently amended on October 25, 2022.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we review administrative misconduct investigations conducted by MCSO personnel and completed during the reporting period. We evaluate compliance with this Paragraph against the standard of whether a finding was made, and whether the finding was correct.

During the last reporting period, we concurred with the findings of the PSB Commander in 114 (97%) of the 117 cases that we reviewed.

During this reporting period, we concurred with the findings of the PSB Commander in 92 (99%) of the 93 administrative misconduct investigations we reviewed. In one investigation, we believe that MCSO should have made sustained findings and that additional investigation should have occurred.

***Paragraph 209.** For investigations carried out by Supervisors outside of the Professional Standards Bureau, the investigator shall forward the completed investigation report through his or her chain of command to his or her Division Commander. The Division Commander must approve the investigation and indicate his or her concurrence with the findings.*

**Phase 1:** In compliance

- GH-2 (Internal Investigations), most recently amended on October 25, 2022.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 16 administrative misconduct investigations conducted by Districts or Divisions outside of PSB. All 16 were forwarded to PSB as required, and all contained the approval of the responsible District or Division Commander. As noted in previous reporting periods, and again during *this* reporting period, some of the District or Division level investigations were not in compliance with various requirements of the Second Order – as indicated throughout this report. However, we assessed MCSO’s compliance with this Paragraph based on these cases being forwarded through the chain of command for approval of the investigation and findings.

***Paragraph 210.** For investigations carried out by the Professional Standards Bureau, the investigator shall forward the completed investigation report to the Commander.*

**In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we reviewed 69 administrative misconduct investigations that were conducted by PSB personnel. All 69 complied with the requirements of this Paragraph. The eight investigations outsourced by PSB also complied with the requirements of this Paragraph.

On September 24, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 211.** *If the Commander—meaning the Commander of the PSB or the Commander of the Division in which the internal affairs investigation was conducted—determines that the findings of the investigation report are not supported by the appropriate standard of proof, the Commander shall return the investigation to the investigator for correction or additional investigative effort, shall document the inadequacies, and shall include this documentation as an addendum to the original investigation. The investigator’s Supervisor shall take appropriate action to address the inadequately supported determination and any investigative deficiencies that led to it. The Commander shall be responsible for the accuracy and completeness of investigation reports prepared by internal affairs investigators under his or her command.*

**Phase 1:** In compliance

- GH-2 (Internal Investigations), most recently amended on October 25, 2022.

**Phase 2:** Not in compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations conducted by MCSO and completed during this reporting period.

PSB investigated 69 of the 93 administrative misconduct investigations we reviewed during this reporting period and outsourced an additional eight. In 68 (99%) of the 69 investigations conducted by PSB, we found the investigations to be thorough, and the reports were well-written. We identified specific concerns with one investigation where we believe PSB arrived at an inappropriate finding and failed to identify additional potential misconduct. Based on our review of these cases, which includes all compliance requirements, 18 investigations (26%) of the 69 total investigations are in compliance, a decrease from 32% in the last quarter.

PSB outsourced eight of the completed investigations we reviewed for this reporting period. All eight were outsourced to the new vendor under the pilot program initiated to address some of the case backlog. Six (75%) were found to be appropriately investigated and the reports thorough, a decrease from the 80% in investigative compliance during the last reporting period. In two, there were numerous leading questions asked of the principals along with other identified concerns. We have discussed the concerns we have with investigations conducted by this vendor with PSB and have also suggested these investigators attend PSB training provided by MCSO. Based on our review of these cases, which includes all compliance requirements, one (13%) of the eight cases was in full compliance a decrease from 20% during the last quarter.

Of the 16 investigations investigated by Districts or Divisions outside of PSB, we identified five investigations (31%) where we had some concerns regarding the investigation or documentation. This is a decrease from 42% in the last reporting period. These concerns, again, included: arriving at an improper finding and failure to address all potential misconduct, or a combination of investigative and administrative deficiencies. Based on our assessment of these investigations, which includes our assessment of extension requests, none of the 16 investigations were in compliance. This is a decrease from the 5% in compliance findings for the last reporting period.

In January 2018, we requested that MCSO begin providing us with documentation that reflects the actions being taken to address deficient misconduct investigations. We requested that PSB and command personnel provide a response to this request on a monthly basis. We have consistently received the requested documentation since March 2018.

During this reporting period, based on the response documents provided for this Paragraph, there were three instances where District Command personnel identified deficiencies in investigations completed by their personnel that needed to be addressed. We will continue to monitor whether identified deficiencies are being addressed in a timely manner.

We have noted in numerous prior reporting periods that both the supervisors who complete deficient investigations and the command personnel who approve them must be held accountable if MCSO is to achieve Phase 2 compliance with this Paragraph. During this reporting period, our review of cases completed by PSB personnel continues to indicate PSB's ongoing efforts to achieve compliance. PSB's investigative compliance was 99%. During the last reporting period, we noted a decrease in compliance from 68% to 58% for those cases completed by Districts and Divisions outside of PSB. During this reporting period, investigative compliance for these cases increased to 69%. We are hopeful that compliance will continue to improve.

During our October 2022 site visit with MCSO, we discussed with MCSO Executive Command the necessity to address deficient investigations. We noted that there were numerous Commander deficiencies that had been identified and documented that had not been addressed by the responsible command officers. We noted during this reporting period that many of these deficiencies have now been addressed, and it appears MCSO is focusing on this concern.

***Paragraph 212.*** *Where an internal affairs investigator conducts a deficient misconduct investigation, the investigator shall receive the appropriate corrective and/or disciplinary action. An internal affairs investigator's failure to improve the quality of his or her investigations after corrective and/or disciplinary action is taken shall be grounds for demotion and/or removal from a supervisory position or the Professional Standards Bureau.*

**Phase 1:** In compliance

- GB-2 (Command Responsibility), most recently amended on June 28, 2019.
- GC-4 (Employee Performance Appraisals), most recently amended on April 27, 2022.
- GC-4 (S) (Employee Performance Management), most recently amended on November 10, 2021.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period.

The 40-hour Misconduct Investigative Training was completed in late 2017. In January 2018, we requested that MCSO begin providing us with a document that reflects what actions are being taken to address deficient misconduct investigations on a monthly basis. As discussed in

Paragraph 211, we have consistently received documentation since March 2018. During this reporting period, PSB identified and documented some deficiencies with investigations. District Commanders and Division Chiefs identified and addressed three instances where deficiencies were found in investigations conducted by their personnel. In all three of these instances, the Command personnel met with the supervisors involved and addressed the identified concerns. We did not identify any supervisors who completed investigations during this reporting period who had any pattern of conducting deficient investigations.

We will continue to closely monitor these monthly reports submitted by MCSO command personnel, along with reviewing completed misconduct investigations, to ensure deficiencies are being properly identified and addressed.

***Paragraph 213.** Investigations of minor misconduct conducted outside of the Professional Standards Bureau must be conducted by a Supervisor and not by line-level deputies. After such investigations, the investigating Supervisor's Commander shall forward the investigation file to the Professional Standards Bureau after he or she finds that the misconduct investigation is complete and the findings are supported by the evidence. The Professional Standards Bureau shall review the misconduct investigation to ensure that it is complete and that the findings are supported by the evidence. The Professional Standards Bureau shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improving the reliability or credibility of the findings. Where the findings of the investigation report are not supported by the appropriate standard of proof, the Professional Standards Bureau shall document the reasons for this determination and shall include this documentation as an addendum to the original investigation.*

**Phase 1:** In compliance

- GH-2 (Internal Investigations), most recently amended on October 25, 2022.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period. Of the 93 investigations, 69 were investigated by PSB personnel, eight were outsourced, and 16 were investigated by MCSO personnel outside of PSB.

None of the documentation we received regarding investigations conducted outside of PSB indicated that any person below the rank of sergeant was responsible for the investigation.

During the last reporting period, all 19 District or Division-level approved cases were forwarded to, and reviewed by, PSB as required. Eight investigations (42%) had identified deficiencies.

During this reporting period, all 16 District or Division-level investigations we reviewed were forwarded to and reviewed by PSB as required. Five investigations (31%) had identified deficiencies, a decrease from 42% during the last reporting period. Deficiencies included inappropriate findings, failure to identify all potential misconduct, or a combination of investigative and administrative deficiencies. All of these investigations were initiated in 2020 or 2021, after the increased oversight began; and all were reviewed for compliance by one or

more members of District or Division command staff prior to forwarding them to PSB. Many of the concerns found in these investigations could and should have been identified and addressed prior to forwarding them to PSB. Our assessment of the 16 investigations, which includes the reasonableness of extension requests, found that none of the 16 investigations were in compliance, a decrease from the 5% compliance for the last reporting period.

As is our practice, we will discuss these cases with MCSO during our next site visit.

***Paragraph 214.** At the discretion of the Commander of the Professional Standards Bureau, a misconduct investigation may be assigned or re-assigned to another Supervisor with the approval of his or her Commander, whether within or outside of the District or Bureau in which the incident occurred, or may be returned to the original Supervisor for further investigation or analysis. This assignment or re-assignment shall be explained in writing.*

### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period.

Our analysis for this reporting period revealed that of the 16 investigations conducted outside of PSB, one was returned by PSB to the original investigating supervisor for further investigation or analysis. None were reassigned to a different investigator.

On September 24, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 215.** If, after an investigation conducted outside of the Professional Standards Bureau, an employee's actions are found to violate policy, the investigating Supervisor's Commander shall direct and ensure appropriate discipline and/or corrective action. Where the incident indicates policy, training, tactical, or equipment concerns, the Commander shall also ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.*

### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we reviewed 16 administrative misconduct investigations conducted by MCSO personnel outside of PSB and completed during this reporting period.

Nine of the 16 completed misconduct investigations conducted outside of PSB resulted in sustained findings. In seven, the reports included documentation that discipline or corrective action was taken. In two, the involved employees left MCSO prior to the completion of the investigations. There were no instances where other actions by Command personnel were necessary.

On September 24, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 216.** If, after an investigation conducted by the Professional Standards Bureau, an employee's actions are found to violate policy, the Commander of the Professional Standards Bureau shall direct and ensure appropriate discipline and/or corrective action. Where the incident indicates policy, training, tactical, or equipment concerns, the Commander of the Professional Standards Bureau shall also ensure that necessary training is delivered and that policy, tactical, or equipment concerns are resolved.*

**Phase 1:** In compliance

- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 93 administrative misconduct investigations during this reporting period.

Sixty-nine of the completed investigations were conducted by PSB. The eight outsourced cases are also included here as PSB maintains responsibility for these cases. Thirty-seven of these cases resulted in sustained findings against current MCSO employees. In all 37, the PSB Commander ensured that appropriate discipline and/or corrective action was recommended for the sustained allegations.

We continue to note that the PSB Commander cannot ensure that appropriate discipline or corrective action are the final outcome of sustained misconduct investigations, as the Appointing Authority makes the final decisions for discipline in both minor misconduct cases and in serious misconduct cases that result in PDHs. This hearing officer has the authority to change the findings or reduce the discipline. In one case, the Appointing Authority overturned a sustained finding by PSB, finding the conduct of the employee to be exonerated. We disagree with his decision and believe the findings by PSB were supported by the facts of the investigation. In four cases we reviewed this reporting period, the Appointing Authority mitigated the discipline for the sustained allegations. In all four, the mitigation fell within the established range of discipline and is therefore in compliance. The Appointing Authority provided justification and documentation as required.

The PSB Commander has consistently ensured that, when appropriate, policy, training, tactical, and equipment concerns are identified. PSB then forwards these concerns to the appropriate Division for follow-up or resolution. PSB personnel maintain a list of these concerns and track the progress of each concern that was forwarded. While investigators are properly identifying

these concerns and authoring appropriate memos of concern, many of the concerns remain unaddressed by those responsible for doing so. We have acknowledged that while the nature of some of these concerns, particularly those that may require policy revision, may take a lengthy amount of time to resolve, many of these have remained pending for several years according to the tracking document provided by PSB. Concerns regarding training, tactical, and equipment have also remained pending for lengthy periods of time. We have discussed this issue with MCSO during multiple site visit meetings, and we also discussed this under Paragraph 207. MCSO must make additional effort to resolve these concerns. We intend to discuss this during our next site visit and ask MCSO to provide additional information as to why these concerns are not being addressed.

***Paragraph 217.** The Professional Standards Bureau shall conduct targeted and random reviews of discipline imposed by Commanders for min or misconduct to ensure compliance with MCSO policy and legal standards.*

#### **In Full and Effective Compliance**

Based on the requirements of the Second Order, District and Division Commanders will not impose discipline for minor misconduct. In all cases, the PSB Commander will determine the final findings for internal investigations and the presumptive range of discipline for those cases with sustained findings. The Appointing Authority will then make the final determination of discipline.

On September 24, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 218.** The Professional Standards Bureau shall maintain all administrative investigation reports and files after they are completed for record-keeping in accordance with applicable law.*

#### **In Full and Effective Compliance**

To determine compliance with this Paragraph, we have observed that PSB maintains both hardcopy and electronic files intended to contain all documents required for compliance with this Paragraph.

A member of our Team inspected the file rooms where hardcopies of administrative investigations were stored and randomly reviewed case files to verify compliance on multiple occasions when PSB was housed at MCSO Headquarters. Our Team member also used the access granted to IAPro to randomly select internal affairs case files to verify that all information was being maintained electronically.

PSB completed the move to its new offsite facility in May 2018. Subsequent to the move, a member of our Team conducted an inspection of the file rooms in the new facility; and reviewed a random sample of internal investigations in IAPro to verify ongoing compliance.

During our January 2019 site visit, a member of our Team verified continued compliance at the new PSB facility by inspecting both the criminal and administrative investigation file rooms and randomly reviewing internal affairs case files to verify that all information was also being electronically maintained in IAPro.

During our July 2019 site visit, a member of our Team verified, by accessing IAPro and reviewing randomly selected cases, that electronic files were being properly maintained.

During our October 2019 site visit, a member of our Team again verified compliance at the PSB facility by inspecting both the criminal and administrative investigation file rooms and randomly reviewing internal affairs case files to verify that all information is also being electronically maintained in IAPro.

On September 24, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

#### **D. Discipline**

**Paragraph 219.** *The Sheriff shall ensure that discipline for sustained allegations of misconduct comports with due process, and that discipline is consistently applied, fair, and based on the nature of the allegation, and that mitigating and aggravating factors are identified and consistently applied and documented regardless of the command level of the principal of the investigation.*

**Paragraph 220.** *To ensure consistency in the imposition of discipline, the Sheriff shall review the MCSO's current disciplinary matrices and, upon approval of the parties and the Monitor, will amend them as necessary to ensure that they:*

- a. establish a presumptive range of discipline for each type of violation;*
- b. increase the presumptive discipline based on an employee's prior violations;*
- c. set out defined mitigating and aggravating factors;*
- d. prohibit consideration of the employee's race, gender, gender identity, sexual orientation, national origin, age, or ethnicity;*
- e. prohibit conflicts, nepotism, or bias of any kind in the administration of discipline;*
- f. prohibit consideration of the high (or low) profile nature of the incident, including media coverage or other public attention;*
- g. clearly define forms of discipline and define classes of discipline as used in policies and operations manuals;*
- h. provide that corrective action such as coaching or training is not considered to be discipline and should not be used as a substitute for discipline where the matrix calls for discipline;*

- i. provide that the MCSO will not take only non-disciplinary corrective action in cases in which the disciplinary matrices call for the imposition of discipline;*
- j. provide that the MCSO will consider whether non-disciplinary corrective action is also appropriate in a case where discipline has been imposed;*
- k. require that any departures from the discipline recommended under the disciplinary matrices be justified in writing and included in the employee's file; and*
- l. provide a disciplinary matrix for unclassified management level employees that is at least as demanding as the disciplinary matrix for management level employees.*

**Phase 1:** In compliance

- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- Administrative Services Division Operations Manual, most recently amended on November 14, 2022.
- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we review completed misconduct investigations.

During this reporting period, the PSB Commander sustained misconduct against one or more identified employees in 46 of the 93 administrative misconduct investigations we reviewed. In 30 of the sustained investigations, one or more of the known principal employees were still employed at MCSO at the time findings or discipline decisions were made. Three sustained investigations resulted in the dismissal of the employee. Nine resulted in suspensions, 14 in written reprimands, and four in coachings. Compliance for this Paragraph is based on the discipline findings for both minor and serious discipline. In those cases where only serious discipline is recommended, compliance findings specific to those cases are addressed in Paragraph 226.

Paragraph 220.a. requires a presumptive range of discipline for each type of violation. Of the 46 total sustained cases, 30 involved known employees still employed by MCSO at the time discipline decisions were made. The PSB Commander determined and documented the presumptive discipline range in compliance with this Subparagraph in all of these cases.

Paragraph 220.b. requires that presumptive discipline be increased if an employee has prior violations. In eleven of the 30 sustained investigations, an employee had prior sustained violations. The PSB Commander considered and increased the presumptive discipline based on the Matrices in place at the time of the misconduct.

Paragraph 220.c. requires that mitigating and aggravating factors be defined. Aggravating and mitigating factors are not specifically defined in the internal affairs investigation or discipline policy in effect prior to May 18, 2017. The revised discipline policy, effective May 18, 2017, defined these factors. These aggravating or mitigating factors are not identified by the PSB Commander – but by the Appointing Authority when making the final disciplinary decisions.

During this reporting period, all but one of the sustained cases were initiated after May 18, 2017. In one case, initiated in 2016, though misconduct was sustained, the principal employees were unknown so no disciplinary decision needed to be made. In the remaining 30 cases, the Appointing Authority provided justification and documentation for all factors considered when making the final decisions in all of the cases based on the Matrices in place at the time of the misconduct. We also found that he continues to specifically identify those instances where there are aggravating or mitigating factors in the justification documents when appropriate.

Paragraph 220.d. prohibits the consideration of any prohibited biases when determining discipline. None of the sustained cases that resulted in discipline that we reviewed during this reporting period included any indication that any biases were considered when determining discipline.

Paragraph 220.e. prohibits any conflicts, nepotism, or bias of any kind in the administration of discipline. None of the sustained cases we reviewed during this reporting period had any indication of conflicts, nepotism, or bias of any kind when determining the disciplinary sanction.

Paragraph 220.f. prohibits the consideration of the high (or low) profile nature of an incident when determining discipline. None of the sustained cases we reviewed during this reporting period indicated any consideration of the high- or low-profile nature of the incident when considering discipline.

Paragraph 220.g. requires that clearly defined forms of discipline and classes of discipline be defined. Phase 2 compliance is not applicable to this Subparagraph.

Paragraph 220.h. requires that corrective action such as coaching or training is not considered to be discipline and should not be used as a substitute for discipline. There were no instances identified during this reporting period where a coaching was used as a substitute for discipline.

Paragraph 220.i. requires that MCSO will not take only non-disciplinary action in cases where the Discipline Matrices call for the imposition of discipline. There were no instances during this reporting period where non-disciplinary action was taken for an act of misconduct that was ineligible to be handled as a coaching.

Paragraph 220.j. requires that MCSO consider whether non-disciplinary corrective action is also appropriate. There were no instances during this reporting period where non-disciplinary actions were also found to be appropriate.

Paragraph 220.k. requires that any departure from the discipline recommended under the Discipline Matrices be justified in writing and included in the employee's file. Thirty-eight investigations with sustained findings resulted in employee discipline or other approved corrective action. Of the 30 cases with discipline or other corrective action, four resulted in dismissal, nine resulted in serious discipline and 14 resulted in minor discipline for one or more

of the involved employees. Four cases resulted in coachings. In four of the cases, the Appointing Authority mitigated the discipline and provided written justification for doing so. In all four, he mitigated the discipline within the range and is therefore in compliance; though in one, we have concerns about the final discipline. We will discuss this case with MCSO during our next site visit.

As we have previously noted, compliance for this Paragraph is based on the final outcome for all sustained investigations. Those instances that involve only serious discipline are specifically covered in Paragraph 226.

Paragraph 220.1. requires that a Discipline Matrix for unclassified management employees be at least as demanding as the Discipline Matrix for management-level employees. We reviewed the approved policies that affect discipline for unclassified management employees, and they comply with this requirement. During this reporting period, MCSO did not complete or submit any administrative investigations involving unclassified management employees.

During this reporting period, all of the sustained investigations were both initiated and completed after May 18, 2017; and are subject to all the requirements relative to investigations and disciplinary procedures contained in policies revised on that date and have both a discipline range and a presumptive discipline. The Appointing Authority provided a written justification in all sustained cases where he made the final decision.

In 26 cases, the final sanction was the presumptive identified by the PSB Commander or another designated employee. In four cases, the Appointing Authority mitigated the discipline as allowed by MCSO policy.

***Paragraph 221.** The Sheriff shall mandate that each act or omission that results in a sustained misconduct allegation shall be treated as a separate offense for the purposes of imposing discipline.*

### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we review completed misconduct investigations.

During this reporting period, we reviewed 30 misconduct investigations with sustained allegations that resulted in the recommendation for corrective action or discipline for MCSO employees. We found that MCSO met the requirements for compliance with this Paragraph.

On September 24, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 222.** *The Sheriff shall also provide that the Commander of the Professional Standards Bureau shall make preliminary determinations of the discipline to be imposed in all cases and shall document those determinations in writing, including the presumptive range of discipline for the sustained misconduct allegation, and the employee's disciplinary history.*

**In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we review completed misconduct investigations.

During this reporting period, there were 30 sustained investigations that resulted in recommendations for discipline. In all 30, the PSB Commander determined and documented in writing the presumptive range of discipline based on the policies and Discipline Matrices in effect at the time of the investigation. The documentation submitted for this Paragraph included the category, offense number, and employee's discipline history.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**E. Pre-Determination Hearings**

**Paragraph 223.** *If the Commander of the Professional Standards Bureau makes a preliminary determination that serious discipline (defined as suspension, demotion, or termination) should be imposed, a designated member of MCSO's command staff will conduct a pre-determination hearing and will provide the employee with an opportunity to be heard.*

**In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we review completed misconduct investigations conducted by MCSO personnel where MCSO holds a Pre-Determination Hearing (PDH).

During this reporting period, 30 administrative misconduct investigations resulted in sustained findings against current MCSO employees. Nineteen of the sustained investigations resulted in recommendations for serious discipline. In 12 of these, a PDH was held. In four, a PDH was not held as the involved employees declined to attend; and in one, the employee provided a written statement in lieu of attending the PDH. In two others, the involved employees resigned prior to a PDH being held.

On September 24, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 224.** *Pre-determination hearings will be audio and video recorded in their entirety, and the recording shall be maintained with the administrative investigation file.*

**In Full and Effective Compliance**

To assess compliance with this Paragraph, we review completed misconduct investigations conducted by MCSO personnel.

During this reporting period, in the 12 cases where a Pre-Determination Hearing was held, the hearing was audio- and video-recorded as required, included in the administrative file, and reviewed by a member of our Team.

On September 24, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 225.** *If an employee provides new or additional evidence at a pre-determination hearing, the hearing will be suspended and the matter will be returned to the internal affairs investigator for consideration or further investigation, as necessary. If after any further investigation or consideration of the new or additional evidence, there is no change in the determination of preliminary discipline, the matter will go back to the pre-determination hearing. The Professional Standards Bureau shall initiate a separate misconduct investigation if it appears that the employee intentionally withheld the new or additional evidence during the initial misconduct investigation.*

**In Full and Effective Compliance**

To assess compliance with this Paragraph, we review completed misconduct investigations conducted by MCSO personnel.

During this reporting period, 12 sustained investigations resulted in a Pre-Determination Hearing and we reviewed all of the recordings of these hearings. There were no instances where we, or the Appointing Authority, identified any concerns that required additional follow-up related to the requirements of this Paragraph.

On September 24, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 226.** *If the designated member of MCSO's command staff conducting the pre-determination hearing does not uphold the charges recommended by the Professional Standards Bureau in any respect, or does not impose the Commander of the Professional Standards Bureau's recommended discipline and/or non-disciplinary corrective action, the Sheriff shall require the designated member of MCSO's command staff to set forth in writing his or her justification for doing so. This justification will be appended to the investigation file.*

**Phase 1:** In compliance

- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- Administrative Services Division Operations Manual, most recently amended on November 14, 2022.

**Phase 2:** In compliance

To assess compliance with this Paragraph, we review completed misconduct investigations conducted by MCSO personnel.

During our site visits, we have met with the Appointing Authority and the Administrative Services Division as necessary to discuss any concerns we have with final outcomes or decisions that result from Pre-Determination Hearings. During these meetings, we have discussed that the Appointing Authority does not have the authority to reduce discipline based only on timeframe concerns when an employee appeals discipline in these cases. It is the Maricopa County Attorney's Office (MCAO) that reviews these cases and determines whether the cases should go forward. Both the Appointing Authority and the representative from the MCAO advised that they have taken some of these cases forward; but in others, they did not believe it was appropriate to do so, based on the totality of circumstances. The Parties have commented on their concerns regarding cases involving the Plaintiffs' class that might result in reductions in discipline as a result of the failure to complete the case within the 180-day timeframe. We have discussed the specific requirements of Arizona Revised Statutes 38-1101, and that the statute only requires a "good faith" attempt to complete cases that result in suspensions, demotions, or dismissals within the 180-day timeframe. Since the time of our first discussions in 2018, Arizona law has added a definition of good faith. A.R.S. 38-1101 now defines good faith as "honesty of purpose and absence of intent to defraud."

We have also discussed those cases where a decision may be made after a Pre-Determination Hearing that a reduction in discipline will occur, and those cases where a decision to reduce the discipline may occur if an appeal is filed. It is our understanding from our meetings with the Appointing Authority and other staff who have been present that MCSO consults with MCAO attorneys in these cases and their input is related to the final outcomes. We continue to note that all the documentation we receive and review is authored and signed by the Appointing Authority, so our assessment can only consider any final decisions as his.

During the last reporting period, nine cases forwarded for consideration of serious discipline resulted in serious discipline. In five cases, the Appointing Authority mitigated the discipline within the range, and MCSO was therefore found in compliance in these five cases. However, in three of these five cases, though the discipline fell within the range, we believed the final discipline was not appropriate for the offenses.

During this reporting period, 12 cases that were forwarded for consideration of serious discipline resulted in serious discipline or dismissal of the involved employee. In all 12, the Appointing Authority provided a justification for the final decisions; and this information was provided to our Team in the submissions regarding closed internal affairs investigations. In four cases, the Appointing Authority mitigated the discipline within the range, and MCSO is therefore in compliance in these four cases. However, in one of these four cases, though the discipline fell within the range, we believe the final discipline was not appropriate for the offense. We will discuss our concerns with this case during our next site visit

***Paragraph 227.** The Sheriff shall promulgate MCSO policy which shall provide that the designated member of MCSO's command staff conducting a pre-determination hearing should apply the disciplinary matrix and set forth clear guidelines for the grounds on which a deviation is permitted. The Sheriff shall mandate that the designated member of MCSO's command staff may not consider the following as grounds for mitigation or reducing the level of discipline prescribed by the matrix:*

- a. his or her personal opinion about the employee's reputation;*
- b. the employee's past disciplinary history (or lack thereof), except as provided in the disciplinary matrix;*
- c. whether others were jointly responsible for the misconduct, except that the MCSO disciplinary decision maker may consider the measure of discipline imposed on other employees involved to the extent that discipline on others had been previously imposed and the conduct was similarly culpable.*

### **In Full and Effective Compliance**

To assess compliance with this Paragraph, we review completed misconduct investigations.

During this reporting period, we reviewed 30 administrative misconduct investigations where discipline was recommended. The serious sustained allegations in 19 of these investigations resulted in their referrals for Pre-Determination Hearings.

Paragraph 227.a. prohibits the designated member of command staff conducting a Pre-Determination Hearing from considering a personal opinion of an employee's reputation when determining discipline. There were no indications in our reviews of these investigations that any personal opinion was considered in making a disciplinary decision.

Paragraph 227.b. prohibits the consideration of the employee's past disciplinary history (or lack thereof), except as provided in the Discipline Matrix. There were no instances where we determined that the member of command staff responsible for conducting the Pre-Determination Hearing considered disciplinary history outside of the requirements of this Paragraph.

Paragraph 227.c. prohibits the consideration of others jointly responsible for misconduct, except that the decision-maker may consider such discipline to the extent that discipline on others had been previously imposed and the conduct was similarly culpable. There were no indications in our reviews that the misconduct of others was improperly considered in the disciplinary decisions that were made.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 228.*** *The Sheriff or his designee has the authority to rescind, revoke or alter any disciplinary decision made by either the Commander of the Professional Standards Bureau or the appointed MCSO disciplinary authority so long as:*

- a. that decision does not relate to the Sheriff or his designee;*
- b. the Sheriff or his designee provides a thorough written and reasonable explanation for the grounds of the decision as to each employee involved;*
- c. the written explanation is placed in the employment files of all employees who were affected by the decision of the Sheriff or his designee; and*
- d. the written explanation is available to the public upon request.*

### **In Full and Effective Compliance**

To assess compliance with this Paragraph, we review completed misconduct investigations.

During this reporting period, we did not review any cases where the Sheriff or his designee rescinded, revoked, or altered any disciplinary decision made by either the Commander of the Professional Standards Bureau or the appointed MCSO disciplinary authority.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

## **F. Criminal Misconduct Investigations**

**Paragraph 229.** *Whenever an internal affairs investigator or Commander finds evidence of misconduct indicating apparent criminal conduct by an employee, the Sheriff shall require that the internal affairs investigator or Commander immediately notify the Commander of the Professional Standards Bureau. If the administrative misconduct investigation is being conducted by a Supervisor outside of the Professional Standards Bureau, the Sheriff shall require that the Professional Standards Bureau immediately take over the administrative investigation. If the evidence of misconduct pertains to someone who is superior in rank to the Commander of the Professional Standards Bureau and is within the Commander's chain of command, the Sheriff shall require the Commander to provide the evidence directly to what he or she believes is the appropriate prosecuting authority—the Maricopa County Attorney, the Arizona Attorney General, or the United States Attorney for the District of Arizona—without notifying those in his or her chain of command who may be the subject of a criminal investigation.*

### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we review completed criminal misconduct investigations.

During this reporting period, we reviewed five criminal investigations. All five were externally generated and appropriately assigned to criminal investigators in PSB. The investigations were brought to the attention of the PSB Commander as required and an administrative misconduct investigation was also initiated.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 230.** *If a misconduct allegation will be investigated criminally, the Sheriff shall require that the Professional Standards Bureau not compel an interview of the principal pursuant to Garrity v. New Jersey, 385 U.S. 493 (1967), until it has first consulted with the criminal investigator and the relevant prosecuting authority. No other part of the administrative investigation shall be held in abeyance unless specifically authorized by the Commander of the Professional Standards Bureau in consultation with the entity conducting the criminal investigation. The Sheriff shall require the Professional Standards Bureau to document in writing all decisions regarding compelling an interview, all decisions to hold any aspect of an administrative investigation in abeyance, and all consultations with the criminal investigator and prosecuting authority.*

### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we review completed misconduct investigations conducted by both criminal and administrative investigators to ensure that they contain appropriate documentation that complies with the requirements of this Paragraph.

We previously determined that in many cases, the administrative investigation is not submitted and reviewed during the same reporting period as the criminal investigation, as generally, administrative investigations are finalized after the completion of the criminal investigation. We discussed this issue with PSB during our January 2017 site visit. To resolve the concern, PSB agreed to provide us with a copy of any criminal investigation when PSB submits the administrative misconduct investigation for our review, even if the criminal investigation has been previously submitted. MCSO has been consistently providing copies of these criminal investigations with the administrative investigation since that time.

During this reporting period, we reviewed three administrative misconduct investigations where criminal conduct may have occurred. In all three, there was a companion criminal investigation completed by MCSO, as required.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 231.** The Sheriff shall require the Professional Standards Bureau to ensure that investigators conducting a criminal investigation do not have access to any statements by the principal that were compelled pursuant to Garrity.*

#### **In Full and Effective Compliance**

PSB is divided into criminal and administrative sections. Criminal investigators and administrative investigators are housed on separate floors of the building. Criminal investigators do not have access to the IAPro database for administrative investigations, and there are separate file rooms for criminal and administrative investigative documents and reports. We have previously verified during our site visits that the required separation of criminal and administrative investigations and restricted access to IAPro is in place.

In May 2018, PSB relocated to a new offsite location. After PSB's move to its new facility, we verified that criminal and administrative investigation files were housed on separate floors in the new facility. Criminal investigators do not have access to the IAPro database for administrative investigations, and there are separate and secured file rooms for criminal and administrative documents and reports.

During our October 2019 site visit, a member of our Team again verified that criminal and administrative investigative files are housed on separate floors, there is restricted access to both file rooms, and restricted access to IAPro remains in place.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 232.** *The Sheriff shall require the Professional Standards Bureau to complete all such administrative investigations regardless of the outcome of any criminal investigation, including cases in which the prosecuting agency declines to prosecute or dismisses the criminal case after the initiation of criminal charges. The Sheriff shall require that all relevant provisions of MCSO policies and procedures and the operations manual for the Professional Standards Bureau shall remind members of the Bureau that administrative and criminal cases are held to different standards of proof, that the elements of a policy violation differ from those of a criminal offense, and that the purposes of the administrative investigation process differ from those of the criminal investigation process.*

**In Full and Effective Compliance**

To determine MCSO's compliance with this Paragraph, we review administrative misconduct and criminal investigations.

During this reporting period, we reviewed five criminal investigations conducted by MCSO personnel. All five have a companion administrative misconduct investigation, as required; and are in compliance with the requirements of this Paragraph.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 233.** *If the investigator conducting the criminal investigation decides to close the investigation without referring it to a prosecuting agency, this decision must be documented in writing and provided to the Professional Standards Bureau. The Commander of the Professional Standards Bureau shall separately consider whether to refer the matter to a prosecuting agency and shall document the decision in writing.*

**In Full and Effective Compliance**

To determine MCSO's compliance with this Paragraph, we review criminal misconduct investigations.

During this reporting period, investigators documented their conclusions and decisions to close four of the five criminal investigations we reviewed without submittal to a prosecuting agency and the PSB Commander approved these decisions.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 234.** *If the investigator conducting the criminal investigation decides to refer the matter to a prosecuting agency, the Professional Standards Bureau shall review the information provided to the prosecuting agency to ensure that it is of sufficient quality and completeness. The Commander of the Professional Standards Bureau shall direct that the investigator conduct additional investigation when it appears that there is additional relevant evidence that may improve the reliability or credibility of the investigation. Such directions shall be documented in writing and included in the investigatory file.*

**In Full and Effective Compliance**

To determine MCSO's compliance with this Paragraph, we review criminal misconduct investigations.

During this reporting period, we reviewed five criminal misconduct investigations conducted by PSB personnel. One was submitted to a prosecutorial agency for review.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 235.** *If the prosecuting agency declines to prosecute or dismisses the criminal case after the initiation of criminal charges, the Professional Standards Bureau shall request an explanation for this decision, which shall be documented in writing and appended to the criminal investigation report.*

**In Full and Effective Compliance**

To determine MCSO's compliance with this Paragraph, we review criminal misconduct investigations.

During this reporting period, one of the five criminal investigations we reviewed was submitted to a prosecutorial agency for review. The prosecuting agency declined prosecution, citing no reasonable likelihood of conviction.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 236.** *The Sheriff shall require the Professional Standards Bureau to maintain all criminal investigation reports and files after they are completed for record-keeping in accordance with applicable law.*

**In Full and Effective Compliance**

To determine compliance with this Paragraph, we have observed that PSB maintains both hardcopy and electronic files that are intended to contain all the documents required per this Paragraph.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

### **G. Civilian Complaint Intake, Communication, and Tracking**

*Paragraph 237. Within six months of the entry of this Order, the Monitor, in consultation with the Community Advisory Board, will develop and implement a program to promote awareness throughout the Maricopa County community about the process for filing complaints about the conduct of MCSO employees.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

We developed and implemented a Complaint Process Community Awareness Program to promote awareness throughout the Maricopa County community about the process for filing complaints about the conduct of MCSO employees. The program provides for distributing brochures describing the complaint process at quarterly community meetings and using public service announcements – made via local media outlets and social media – to provide basic information (in both English and Spanish) about MCSO’s complaint process.

We contacted faith organizations and civic groups throughout Maricopa County requesting that they make complaint process information forms available to members of their congregations and groups. The Complaint Process Community Awareness Program incorporates input from the CAB, MCSO, and the ACLU of Arizona.

*Paragraph 238. The Sheriff shall require the MCSO to accept all civilian complaints, whether submitted verbally or in writing; in person, by phone, by mail, or online; by a complainant, someone acting on the complainant’s behalf, or anonymously; and with or without a signature from the complainant. MCSO will document all complaints in writing.*

#### **In Full and Effective Compliance**

To assess compliance with this Paragraph, we review all new misconduct complaints received each month and completed misconduct investigations conducted by MCSO personnel. In addition, we review many initial complaint documents or initial telephone calls, BWC videos, traffic stop videos, Supervisor Notes, Compliance and BIO reviews, and consider findings in the complaint testing process.

During the last reporting period, we reviewed 117 administrative misconduct investigations. We identified one investigation where an employee did not accept a complaint from a community member as required. This was addressed with PSB.

During this reporting period, we reviewed 93 completed administrative misconduct investigations. We did not identify any instances where an employee did not accept a complaint from a community member as required.

Our review of traffic stops for this reporting period did not identify any instances where a subject who was arrested made allegations of misconduct by MCSO personnel during his arrest that went unaddressed. Our review of Supervisor Notes during this reporting period did not identify any incidents where there were indications that a complaint had been made but not properly reported. We reviewed numerous complainant contacts and found no indication that a supervisor initially refused to take a complaint or attempted to dissuade the complainant from making a complaint. Neither CID nor BIO identified any instances in their reviews during this reporting period that indicated that a complainant had attempted to file a complaint and been refused. We did not identify any complaint intake tests for this reporting period where MCSO failed to accept a complaint. (See Paragraph 254.)

We continue to find that MCSO consistently accepts and records complaints as required for compliance with this Paragraph.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 239.** In locations clearly visible to members of the public at the reception desk at MCSO headquarters and at all District stations, the Sheriff and the MCSO will post and maintain permanent placards clearly and simply describing the civilian complaint process that is visible to the public at all hours. The placards shall include relevant contact information, including telephone numbers, email addresses, mailing addresses, and Internet sites. The placards shall be in both English and Spanish.*

### **In Full and Effective Compliance**

As we did not hold an in-person site visit in October, we were unable to visit MCSO Headquarters and MCSO Districts to determine if the permanent placards were prominently displayed at MCSO Headquarters and Districts. During our October remote site visit, MCSO reported that, during this reporting period, MCSO did not add or eliminate any locations displaying permanent complaint placards. MCSO further reported that, during this reporting period, it did not receive any feedback from the community regarding the permanent complaint placards. When inspected during our last in-person site visit, we noted that MCSO's placard states that anyone who has a concern regarding the performance of any MCSO employee has the right to file a complaint in English or Spanish or their preferred language, to include American Sign Language; in person at any District facility or at the Professional Standards Bureau, by mail, by telephone, by fax, or online. The placard includes relevant contact information, including telephone numbers, email addresses, mailing addresses, and websites.

On March 16, 2021, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 240.** *The Sheriff shall require all deputies to carry complaint forms in their MCSO vehicles. Upon request, deputies will provide individuals with complaint forms and information about how to file a complaint, their name and badge number, and the contact information, including telephone number and email address, of their immediate supervising officer. The Sheriff must provide all supervising officers with telephones. Supervising officers must timely respond to such complaints registered by civilians.*

**Phase 1:** In compliance

- EA-2 (Patrol Vehicles), most recently revised on March 16, 2022.
- GE-4 (Use, Assignment, and Operation of Vehicles), most recently amended on April 6, 2022.
- GJ-24 (Community Relations and Youth Programs), most recently revised on April 7, 2022.

**Phase 2:** In compliance

As we held our October site visit remotely, we were unable to visit District offices to verify that MCSO maintained adequate supplies of complaint forms for deputies to carry in their vehicles. We were also unable to verify that supervisors were in possession of MCSO-issued cellular telephones. We will resume these verifications when we resume our in-person site visits.

**Paragraph 241.** *The Sheriff will ensure that the Professional Standards Bureau facility is easily accessible to members of the public. There shall be a space available for receiving walk-in visitors and personnel who can assist the public with filing complaints and/or answer an individual's questions about the complaint investigation process.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

The PSB facility, the former East Court Building Library, located at 101 West Jefferson Street in Phoenix, is easily accessible to members of the public. The County Court facilities in the building are separate from the PSB reception area and offices. The PSB area is accessible from First Avenue, a major thoroughfare; and there is no required security screening of individuals entering the building through the First Avenue entrance. As we held our October site visit remotely, we were unable to visit the PSB facility during this reporting period. We will visit the facility again when we resume our in-person site visits.

MCSO's placards and comment and complaint forms – including the complaint form that is accessible via MCSO's website – all reflect PSB's current address.

**Paragraph 242.** *The Sheriff will also make complaint forms widely available at locations around the County including: the websites of MCSO and Maricopa County government; the lobby of MCSO's headquarters; each patrol District; and the Maricopa County government offices. The Sheriff will ask locations, such as public library branches and the offices and gathering places of community groups, to make these materials available.*

**Phase 1:** In compliance

- GJ-24 (Community Relations and Youth Programs), most recently revised on April 7, 2022.

**Phase 2:** In compliance

MCSO has complaint forms available in English and Spanish on the MCSO and Maricopa County websites. MCSO maintains a list – of MCSO facilities, County offices, and public locations where community groups meet – where Community Outreach Division personnel attempt to make the forms available.

Due to the cancellation of our in-person site visit in October due to the ongoing COVID-19 pandemic, we were unable to verify that MCSO placed complaint forms in locations that were included on MCSO's list of facilities where complaint forms are available to the public. During this reporting period, we requested that the Community Outreach Division (CO<sub>R</sub>D) provide its proposed changes to the list of locations throughout Maricopa County displaying Comment and Complaint Forms to make the forms more accessible to community members.

As we have noted previously, during our site visit discussions, Community Advisory Board (CAB) members have recommended that the CO<sub>R</sub>D place complaint forms in locations including grocery stores, pharmacies, and other retail stores that are located in communities where members of the Plaintiffs' class live and work. CO<sub>R</sub>D staff reported that they inquired with other businesses, but their corporate offices would not permit the forms to be displayed in their stores. We encourage the CO<sub>R</sub>D to continue to explore other possible locations, as recommended by the CAB, including small businesses without corporate offices.

**Paragraph 243.** *The Sheriff shall establish a free, 24-hour hotline for members of the public to make complaints.*

**In Full and Effective Compliance**

In July 2016, MCSO established the free 24-hour hotline for members of the public to make complaints; the hotline continued to be operational during this reporting period. We periodically called the hotline during this reporting period; and verified that the hotline is operational in both English and Spanish, and provides instructions in both languages on how to register a complaint. The recording advises callers that if the call is an emergency, they are to call 911. Callers are requested to provide their name, telephone number, and a brief summary of their complaint. If callers leave a recorded message, they are advised that MCSO will contact them as soon as possible. If callers do not wish to leave a recorded message, they are provided with a telephone number to call to speak to a supervisor. That number connects the callers to the MCSO switchboard operator, who will connect the caller to an appropriate supervisor. Callers are further advised of MCSO's operating hours if they wish to contact PSB directly.

The hotline is housed in PSB, and PSB personnel access any recorded messages at the beginning of each business day. The most recently received hotline complaint that remains open was received on October 18, 2022. Currently, there are nine hotline complaints under investigation, none of which are under Command review. None of the nine complaints are deemed service complaints.

The procedures established and followed by PSB provide for creating a record of every complaint received on the hotline and maintaining a log of follow-up actions regarding referral of the complaint.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 244.** *The Sheriff shall ensure that the MCSO's complaint form does not contain any language that could reasonably be construed as discouraging the filing of a complaint, such as warnings about the potential criminal consequences for filing false complaints.*

**In Full and Effective Compliance**

Our review of the English and Spanish complaint forms' content did not reveal any language that could reasonably be construed as discouraging the filing of a complaint.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 245.** *Within two months of the entry of this Order, complaint forms will be made available, at a minimum, in English and Spanish. The MCSO will make reasonable efforts to ensure that complainants who speak other languages (including sign language) and have limited English proficiency can file complaints in their preferred language. The fact that a complainant does not speak, read, or write in English, or is deaf or hard of hearing, will not be grounds to decline to accept or investigate a complaint.*

### **In Full and Effective Compliance**

Complaint forms in English and Spanish are accessible on MCSO's website. The complaint form states that anyone who has a concern regarding the performance of any MCSO employee has the right to file a complaint – in English or Spanish or their preferred language, to include American Sign Language – in person at any District facility or at the Professional Standards Bureau, by mail, by telephone, by fax, or online. The forms provide street addresses, contact numbers, and website information.

During this reporting period, no grievances were filed that met the criteria for transmitting to the Monitor.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 246.** *In the course of investigating a civilian complaint, the Professional Standards Bureau will send periodic written updates to the complainant including:*

- a. *within seven days of receipt of a complaint, the Professional Standards Bureau will send non-anonymous complainants a written notice of receipt, including the tracking number assigned to the complaint and the name of the investigator assigned. The notice will inform the complainant how he or she may contact the Professional Standards Bureau to inquire about the status of a complaint;*
- b. *when the Professional Standards Bureau concludes its investigation, the Bureau will notify the complainant that the investigation has been concluded and inform the complainant of the Bureau's findings as soon as is permitted by law; and*
- c. *in cases where discipline is imposed, the Professional Standards Bureau will notify the complainant of the discipline as soon as is permitted by law.*

### **Phase 1: In compliance**

- GH-2 (Internal Investigations), most recently amended on October 25, 2022.

### **Phase 2: In compliance**

To assess compliance with this Paragraph, we review completed misconduct investigations.

During this reporting period, we reviewed 93 administrative misconduct investigations. Of these, 61 were externally generated.

Paragraph 246.a. requires that a civilian complainant receive a written notice of receipt of his/her complaint within seven days. This letter must include the tracking number, the name of the investigator assigned, and information regarding how the complainant can inquire about the status of his/her complaint. In all of the externally generated cases where PSB had contact information for the complainant, the letter was sent within seven days as required. All of the letters sent and reviewed included the name of the investigator and information regarding how the complainant could inquire about the status of the complaint.

Paragraph 246.b. requires that PSB notify a civilian complainant of the outcome of the investigation. In all of the externally generated complaints, the complainant was provided a notice of the outcome when contact information was known.

Paragraph 246.c. requires that PSB notify a civilian complainant of any discipline imposed as soon as permitted by law. In all of the externally generated complaints with sustained findings, PSB properly notified the complainant of the sustained findings and the discipline imposed when contact information for the complainant was known.

*Paragraph 247. Notwithstanding the above written communications, a complainant and/or his or her representative may contact the Professional Standards Bureau at any time to determine the status of his or her complaint. The Sheriff shall require the MCSO to update the complainant with the status of the investigation.*

### **In Full and Effective Compliance**

To assess compliance with this Paragraph, we review completed misconduct investigations.

During this reporting period, we reviewed 93 administrative misconduct investigations. Sixty-one were externally generated. We did not identify any instances where a complainant was discouraged from, or denied, contact with MCSO investigators to determine the status of his/her complaint, or to request and receive an update. MCSO appropriately had contact with complainants as required in Paragraph 246 in all of these cases where the complainant was known and wished to participate in the investigation. In two of the cases, MCSO personnel reported that they had additional contact with the complainant during the course of the investigation.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 248.** *The Professional Standards Bureau will track, as a separate category of complaints, allegations of biased policing, including allegations that a deputy conducted an investigatory stop or arrest based on an individual's demographic category or used a slur based on an individual's actual or perceived race, ethnicity, nationality, or immigration status, sex, sexual orientation, or gender identity. The Professional Standards Bureau will require that complaints of biased policing are captured and tracked appropriately, even if the complainant does not so label the allegation.*

#### **In Full and Effective Compliance**

To assess Phase 2 compliance with this Paragraph, we review completed misconduct investigations.

Each month, PSB provides a list of new complaints alleging biased policing. PSB also provides all closed investigations where biased policing was alleged. For this Paragraph, only allegations of biased policing that do not affect the Plaintiffs' class are reported. Those complaints alleging bias against members of the Plaintiffs' class are captured in a separate category and reported under Paragraphs 275-288.

During this reporting period, we reviewed three investigations where potential bias was alleged that did not affect members of the Plaintiffs' class. PSB tracked these investigations in a separate category as required by this Paragraph, and reported them in Paragraph 33.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 249.** *The Professional Standards Bureau will track, as a separate category of complaints, allegations of unlawful investigatory stops, searches, seizures, or arrests.*

#### **In Full and Effective Compliance**

To determine Phase 2 compliance for this Paragraph, we review a monthly report from PSB that provides the information required for compliance.

To ensure that we are consistently informed of complaints relative to this Paragraph, PSB provides information concerning these investigations in its monthly document submission relative to this Paragraph. During the last reporting period, there were no investigations related to this Paragraph submitted for our review. During this reporting period, there was one investigation submitted for review for this Paragraph. As required, the complaint was tracked in a separate category of complaints.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 250.** *The Professional Standards Bureau will conduct regular assessments of the types of complaints being received to identify and assess potential problematic patterns and trends.*

### **In Full and Effective Compliance**

PSB continues to prepare a comprehensive quarterly assessment of the types of complaints received to identify and assess potential problematic patterns or trends. During this reporting period, PSB received 187 complaints. PSB's assessment identifies the Divisions that received the highest number of complaints during the quarter, notable patterns and trends identified within MCSO Divisions, a summary of all of the misconduct allegations made during the quarter, and identifies employees with potentially problematic patterns or trends of misconduct during the quarter.

The contents of the quarterly assessment are discussed at executive staff meetings. PSB also includes the information required by this Paragraph in its public Semi-Annual Misconduct Investigations Report, which is required under Paragraph 251. The most recent Semi-Annual Report for the period of July 1–December 31, 2021, contains the issues identified as potentially problematic patterns or trends.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion.

### **H. Transparency Measures**

**Paragraph 251.** *The Sheriff shall require the Professional Standards Bureau to produce a semi-annual public report on misconduct investigations, including, at a minimum, the following:*

- a. *summary information, which does not name the specific employees involved, about any sustained allegations that an employee violated conflict-of-interest rules in conducting or reviewing misconduct investigations;*
- b. *aggregate data on complaints received from the public, broken down by district; rank of principal(s); nature of contact (traffic stop, pedestrian stop, call for service, etc.); nature of allegation (rudeness, bias-based policing, etc.); complainants' demographic information; complaints received from anonymous complainants or third parties; and principals' demographic information;*
- c. *analysis of whether any increase or decrease in the number of civilian complaints received from reporting period to reporting period is attributable to issues in the complaint intake process or other factors;*
- d. *aggregate data on internally-generated misconduct allegations, broken down by similar categories as those for civilian complaints;*
- e. *aggregate data on the processing of misconduct cases, including the number of cases assigned to Supervisors outside of the Professional Standards Bureau versus investigators in the Professional Standards Bureau; the average and median time from the initiation of an investigation to its submission by the investigator to his or her chain of command; the*

*average and median time from the submission of the investigation by the investigator to a final decision regarding discipline, or other final disposition if no discipline is imposed; the number of investigations returned to the original investigator due to conclusions not being supported by the evidence; and the number of investigations returned to the original investigator to conduct additional investigation;*

- f. *aggregate data on the outcomes of misconduct investigations, including the number of sustained, not sustained, exonerated, and unfounded misconduct complaints; the number of misconduct allegations supported by the appropriate standard of proof; the number of sustained allegations resulting in a non-disciplinary outcome, coaching, written reprimand, suspension, demotion, and termination; the number of cases in which findings were changed after a pre-determination hearing, broken down by initial finding and final finding; the number of cases in which discipline was changed after a pre-determination hearing, broken down by initial discipline and final discipline; the number of cases in which findings were overruled, sustained, or changed by the Maricopa County Law Enforcement Merit System Council, broken down by the finding reached by the MCSO and the finding reached by the Council; and the number of cases in which discipline was altered by the Council, broken down by the discipline imposed by the MCSO and the disciplinary ruling of the Council; and similar information on appeals beyond the Council; and*
- g. *aggregate data on employees with persistent or serious misconduct problems, including the number of employees who have been the subject of more than two misconduct investigations in the previous 12 months, broken down by serious and minor misconduct; the number of employees who have had more than one sustained allegation of minor misconduct in the previous 12 months, broken down by the number of sustained allegations; the number of employees who have had more than one sustained allegation of serious misconduct in the previous 12 months, broken down by the number of sustained allegations; and the number of criminal prosecutions of employees, broken down by criminal charge.*

### **In Full and Effective Compliance**

The PSB Operations Manual identifies the PSB Commander as responsible for preparing the semi-annual public report on misconduct investigations. The manual also contains provisions for the production of summary information regarding sustained conflict of interest violations; an analysis of the complaint intake process; and aggregate data on complaints (internal and external), processing of misconduct cases, outcomes of misconduct cases, and employees with persistent misconduct problems.

Since July 2019, PSB has issued and posted on MCSO's website its semi-annual public report. PSB also incorporates information relevant to Paragraph 192 in its semi-annual report, which requires that PSB review, at least semi-annually, all misconduct investigations that were assigned outside the Bureau to determine whether or not the investigation was properly categorized, whether the investigation was properly conducted, and whether appropriate findings were reached. PSB also incorporates information relevant to Paragraph 250 in this report, which includes an assessment of potential problematic patterns or trends, based on a review on complaints received.

During our October 2019 site visit, PSB informed us that it developed a voluntary survey for complainants to complete after the conclusion of the investigation; the survey would capture complainants' demographic information. MCSO utilizes prepaid postage return envelopes when mailing to the surveys to the complainants. The use of the prepaid postage return envelopes allows the complainants to mail the survey to MCSO without having to incur any fees. PSB commenced distribution of the surveys to complainants for cases that were closed during January 2020. In addition, PSB is also informing complainants of a web-based version of the survey that may be completed online. PSB is now collecting the voluntary surveys that are returned. PSB continues to include the relevant demographic information in the most recently published semi-annual report.

In August 2022, PSB issued and posted on the MCSO website its semi-annual public report for period of July 1–December 31, 2021. The report was prepared consistent with prior reports prepared by PSB and contains the relevant information pertaining to this Paragraph.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 252.** The Sheriff shall require the MCSO to make detailed summaries of completed internal affairs investigations readily available to the public to the full extent permitted under state law, in electronic form on a designated section of its website that is linked to directly from the MCSO's home page with prominent language that clearly indicates to the public that the link provides information about investigations of misconduct alleged against MCSO employees.*

### **In Full and Effective Compliance**

PSB publishes detailed summaries each month of completed misconduct investigations in an electronic format that is accessible via MCSO's website. The following data fields have been identified for public disclosure: Internal Affairs Number; Date Opened; Incident Type; Original Complaint; Policy Violation(s) Alleged/Outcome; Discipline; Investigative Summary; and Date Completed. During our April 2017 site visit, we approved the PSB template containing detailed summaries of completed misconduct investigations for placement on the MCSO website. Each reporting period, we conduct a review of the detailed summaries of completed misconduct investigations to ensure that the content is consistent with the requirements of this Paragraph. In addition, we verify that the monthly detailed summaries of completed misconduct investigations are posted on MCSO's website for public review.

During this reporting period, PSB made the monthly detailed summaries of completed internal investigations for July, August, and September 2022 available to the public in a designated section on the homepage of MCSO's website. The reports provide significant details regarding alleged misconduct, the findings of the investigation, and, if there is a finding of misconduct, what type of discipline was imposed.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 253.** *The MCSO Bureau of Internal Oversight shall produce a semi-annual public audit report regarding misconduct investigations. This report shall analyze a stratified random sample of misconduct investigations that were completed during the previous six months to identify any procedural irregularities, including any instances in which:*

- a. *complaint notification procedures were not followed;*
- b. *a misconduct complaint was not assigned a unique identifier;*
- c. *investigation assignment protocols were not followed, such as serious or criminal misconduct being investigated outside of the Professional Standards Bureau;*
- d. *deadlines were not met;*
- e. *an investigation was conducted by an employee who had not received required misconduct investigation training;*
- f. *an investigation was conducted by an employee with a history of multiple sustained misconduct allegations, or one sustained allegation of a Category 6 or Category 7 offense from the MCSO's disciplinary matrices;*
- g. *an investigation was conducted by an employee who was named as a principal or witness in any investigation of the underlying incident;*
- h. *an investigation was conducted of a superior officer within the internal affairs investigator's chain of command;*
- i. *any interviews were not recorded;*
- j. *the investigation report was not reviewed by the appropriate personnel;*
- k. *employees were promoted or received a salary increase while named as a principal in an ongoing misconduct investigation absent the required written justification;*
- l. *a final finding was not reached on a misconduct allegation;*
- m. *an employee's disciplinary history was not documented in a disciplinary recommendation; or*
- n. *no written explanation was provided for the imposition of discipline inconsistent with the disciplinary matrix.*

### **In Full and Effective Compliance**

On June 26, 2018, we approved the methodology developed by AIU for the inspection that would address the requirements of this Paragraph, which would start with an inspection of investigations that commenced after November 1, 2017. AIU has opted to conduct monthly inspections of misconduct investigations in lieu of conducting a semi-annual audit. During this reporting period, AIU prepared inspection reports for misconduct investigations that closed during the months of May, June, and July 2022.

When perceived deficiencies are identified, AIU requests a BIO Action Form from the specific District/Division Commander to address the issue(s).

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion.

#### ***I. Testing Program for Civilian Complaint Intake***

***Paragraph 254.*** *The Sheriff shall initiate a testing program designed to assess civilian complaint intake. Specifically, the testing program shall assess whether employees are providing civilians appropriate and accurate information about the complaint process and whether employees are notifying the Professional Standards Bureau upon the receipt of a civilian complaint.*

### **In Full and Effective Compliance**

We evaluate MCSO's compliance with this Paragraph based on how the agency responds to the outcomes of the tests, regardless of whether the tests "succeed" or "fail."

To meet the requirements of this Paragraph, AIU contracts with an external vendor, Progressive Management Resources (PMR), which is responsible for conducting complaint intake testing via telephone, email, U.S. Mail, MCSO's website, and in-person tests. We receive and review documentation of these tests – including any available audio-recorded documentation – as they are completed, as part of our monthly document requests. PMR does not advise AIU of the tests in advance but instead emails AIU once a test has been completed with documentation of the test.

During the last reporting period, we did not have any concerns with the eight tests conducted by PMR – all of which were conducted in person. In seven of the eight tests, MCSO personnel responded appropriately and in a timely fashion; and we did not note any deficiencies. In the eighth test, a tester who went to a District office to complain that she observed a deputy driving unsafely, interacted with a deputy who informed her that an on-duty supervisor was not available. The deputy did not, as required by policy, obtain additional information from the tester about her complaint. Following the test, AIU appropriately issued a BIO Action Form for this deputy.

During this reporting period, PMR conducted five tests – all in-person. The tests were conducted in Districts 1, 3 (two tests), 4, and 7. PMR did not conduct any tests via U.S. Mail, email, MCSO's website, or telephone during this reporting period.

In four of the five tests that were conducted, MCSO personnel responded appropriately and in a timely fashion, and we did not note any deficiencies. In the fifth test, the tester, a Latino, visited District 1 to report that he observed a deputy using a handicapped parking space in the parking

lot of a restaurant while the deputy was inside “taking his time eating.” When the tester visited District 1, he spoke with an office assistant who asked him to fill out a Comment and Complaint Form. The tester wrote on his testing documentation, “I asked for a supervisor, but never got to speak to one.” The tester also reported that he believed that office assistant was unprofessional due to the casual clothing and shoes that she wore and that he “felt she was discouraging regarding speaking with someone.” He also noted that he “felt sort of pushed out” and that the MCSO personnel with whom he interacted “were not as helpful as during other tests.” Following this test, AIU noted four deficiencies, including that the complaint was not referred to an on-duty supervisor; the complaint was not entered into BlueTeam by District 1 staff; an interview with the complainant was neither video- nor audio-recorded; and the complaint was not immediately forwarded to PSB through BlueTeam. AIU appropriately issued a BIO Action Form for the involved personnel.

Following the outcome of several past complaint intake tests in which front-line staff responded inappropriately, AIU developed a useful complaint intake checklist for administrative staff, which we and the Parties reviewed and approved. MCSO distributed the checklist to the Patrol Divisions for dissemination to their personnel who interact with the public, and the checklist is available to all employees via the agency’s shared internal hard drive.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

*Paragraph 255. The testing program is not intended to assess investigations of civilian complaints, and the MCSO shall design the testing program in such a way that it does not waste resources investigating fictitious complaints made by testers.*

### **In Full and Effective Compliance**

AIU has informed its complaint intake testing vendor of this requirement. AIU has created several procedures to ensure that the Complaint Intake Testing Program does not waste resources investigating fictitious complaints made by testers – including setting parameters for the types of inquiries that testers make, and creating official identification cards for testers designating them as such. For in-person tests, AIU requires that the vendor inform AIU in advance of all tests; and AIU personnel make themselves available via telephone if testers encounter any issue as they lodge their test complaints.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 256.** *The testing program shall assess complaint intake for complaints made in person at MCSO facilities, complaints made telephonically, by mail, and complaints made electronically by email or through MCSO's website. Testers shall not interfere with deputies taking law enforcement action. Testers shall not attempt to assess complaint intake in the course of traffic stops or other law enforcement action being taken outside of MCSO facilities.*

**In Full and Effective Compliance**

AIU has advised its complaint intake testing vendor that testers shall not interfere with deputies taking law enforcement action, nor shall they attempt to assess complaint intake in the course of traffic stops or other law enforcement action being taken outside of MCSO facilities.

AIU has asked the vendor to inform AIU in advance of all in-person tests, and AIU personnel make themselves available via telephone if testers encounter any issue as they lodge their test complaints.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 257.** *The testing program shall include sufficient random and targeted testing to assess the complaint intake process, utilizing surreptitious video and/or audio recording, as permitted by state law, of testers' interactions with MCSO personnel to assess the appropriateness of responses and information provided.*

**In Full and Effective Compliance**

AIU has informed its complaint intake testing vendor of the requirements of this Paragraph. We receive copies of the recordings following the completion of the tests. Per the agreed-upon methodology, all tests conducted via telephone are audio-recorded; and all in-person testers' interactions with MCSO personnel are video-recorded to assess the appropriateness of responses and information provided.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 258.** *The testing program shall also assess whether employees promptly notify the Professional Standards Bureau of civilian complaints and provide accurate and complete information to the Bureau.*

**In Full and Effective Compliance**

AIU has informed its complaint intake testing vendor of the requirements of this Paragraph so that the tests it conducts shall also assess whether employees promptly notify the PSB of civilian complaints and provide accurate and complete information to the Bureau.

As it receives documentation about completed tests, AIU reviews the information; and issues BIO Action Forms, authors memorandums of concern, or takes other appropriate action if a test fails or raises any concerns about the conduct of MCSO employees.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 259.*** *MCSO shall not permit current or former employees to serve as testers.*

**In Full and Effective Compliance**

AIU has informed its complaint intake testing vendor of this requirement. AIU personnel have informed us that no current or former employees have served, or will serve in the future, as testers.

On April 1, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 260.*** *The MCSO shall produce an annual report on the testing program. This report shall include, at a minimum:*

- a. a description of the testing program, including the testing methodology and the number of tests conducted broken down by type (i.e., in-person, telephonic, mail, and electronic);*
- b. the number and proportion of tests in which employees responded inappropriately to a tester;*
- c. the number and proportion of tests in which employees provided inaccurate information about the complaint process to a tester;*
- d. the number and proportion of tests in which employees failed to promptly notify the Professional Standards Bureau of the civilian complaint;*
- e. the number and proportion of tests in which employees failed to convey accurate information about the complaint to the Professional Standards Bureau;*
- f. an evaluation of the civilian complaint intake based upon the results of the testing program; and*
- g. a description of any steps to be taken to improve civilian complaint intake as a result of the testing program.*

**Phase 1: In compliance**

- Audits and Inspections Unit Operations Manual, Section 304, published on January 30, 2019.
- GH-4 (Bureau of Internal Oversight Audits and Inspections), most recently amended on February 25, 2021.

**Phase 2: In compliance**

AIU issued its third annual report on the complaint intake testing program on July 20, 2022. The annual report covers the 24 tests that were completed by its external vendor between July 1, 2021-June 30, 2022. These tests included: 12 in-person tests; two tests conducted via U.S. Mail; four tests conducted via telephone; three tests conducted via email; and three tests conducted via MCSO's website. The report also notes that during this time period, MCSO's vendor experienced challenges when some testers attempting to file complaints in-person encountered District offices that remained closed due to COVID-19 restrictions. In response, AIU worked with its vendor, and in consultation with our Team, developed guidelines to assist testers in these circumstances.

While not required by this Paragraph, AIU also continues to issue monthly reports on complaint intake testing. We review these reports and find that they accurately summarize the results of the complaint intake tests and any follow-up actions taken by AIU.

## Section 13: Community Outreach and Community Advisory Board

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### **COURT ORDER XVI. COMMUNITY OUTREACH AND COMMUNITY ADVISORY BOARD**

***Paragraph 261.** The Community Advisory Board may conduct or retain a consultant to conduct a study to identify barriers to the filing of civilian complaints against MCSO personnel.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

The CAB continues to explore the possibility of retaining a consultant to conduct a study to identify barriers to the filing of civilian complaints against MCSO personnel. The CAB is particularly interested in learning more about any barriers to filing complaints that may exist for members of the Plaintiffs' class.

***Paragraph 262.** In addition to the administrative support provided for in the Supplemental Permanent Injunction, (Doc. 670 ¶ 117), the Community Advisory Board shall be provided with annual funding to support its activities, including but not limited to funds for appropriate research, outreach advertising and website maintenance, stipends for intern support, professional interpretation and translation, and out-of-pocket costs of the Community Advisory Board members for transportation related to their official responsibilities. The Community Advisory Board shall submit a proposed annual budget to the Monitor, not to exceed \$15,000, and upon approval of the annual budget, the County shall deposit that amount into an account established by the Community Advisory Board for that purpose. The Community Advisory Board shall be required to keep detailed records of expenditures which are subject to review.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

The CAB's approved budget includes categories for expenses including community meetings; video production (to produce a short video in English and Spanish that provides information about the CAB and the MCSO complaint process); marketing materials; stipends for an assistant to help coordinate CAB meeting logistics; and reimbursement for CAB members' meeting expenses.

Following the Monitor's approval of the CAB's budget, the CAB established a bank account, and the County provided the \$15,000. CAB members developed procedures for tracking funds and receiving reimbursement. We meet regularly with CAB members to discuss these procedures and review the CAB's expenditures to date; these records appear to be in order.

## Section 14: Supervision and Staffing

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### COURT ORDER XVII. SUPERVISION AND STAFFING

**Paragraph 263.** *The following Section of this Order represents additions and amendments to Section X of the first Supplemental Permanent Injunction, Supervision and Evaluations of Officer Performance, and the provisions of this Section override any conflicting provisions in Section X of the first Supplemental Permanent Injunction.*

**Paragraph 264.** *The Sheriff shall ensure that all patrol deputies shall be assigned to a primary, clearly identified, first-line supervisor.*

#### **In Full and Effective Compliance**

To verify Phase 2 compliance with this Paragraph, we reviewed monthly rosters and shift rosters for the third quarter of 2022. For July, we reviewed a sample of shift rosters from Districts 1, 2, and 3. For August, we reviewed a sample of shift rosters from Districts 4 and 7, and Lake Patrol. For September, we reviewed a sample of shift rosters from Districts 1, 2, and 3. Our reviews of monthly and daily rosters indicated that deputies were assigned to a single consistent supervisor, and deputies worked the same shifts as their supervisors.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 265.** *First-line patrol supervisors shall be responsible for closely and consistently supervising all deputies under their primary command.*

#### **Phase 1:** In compliance

- GB-2 (Command Responsibility), most recently amended on June 28, 2019.

#### **Phase 2:** In compliance

Paragraph 265 is a general directive that covers several aspects of supervision. There are several requirements covered in other Paragraphs that directly concern this Paragraph; these requirements must be met before MCSO can establish compliance with Paragraph 265. We have determined that for MCSO to meet the requirements of this Paragraph, MCSO must be in compliance with Paragraphs 83, 85, 89, 90, 91, 93, and 94. During the previous reporting period, we issued a noncompliance warning for Paragraph 85. For this quarter, we issued a noncompliance warning for Paragraphs 83 and 94. This marks the second consecutive quarter during which MCSO has not been in compliance with all of the Paragraphs required for compliance with this Paragraph. For this reporting period, MCSO is not in compliance with this Paragraph. For this reporting period, we will issue a noncompliance warning for Paragraph 265, since not all required Paragraphs were in compliance.

**Paragraph 266.** *First-line patrol supervisors shall be assigned as primary supervisor to no more persons than it is possible to effectively supervise. The Sheriff should seek to establish staffing that permits a supervisor to oversee no more than eight deputies, but in no event should a supervisor be responsible for more than ten persons. If the Sheriff determines that assignment complexity, the geographic size of a district, the volume of calls for service, or other circumstances warrant an increase or decrease in the level of supervision for any unit, squad, or shift, it shall explain such reasons in writing, and, during the period that the MCSO is subject to the Monitor, shall provide the Monitor with such explanations. The Monitor shall provide an assessment to the Court as to whether the reduced or increased ratio is appropriate in the circumstances indicated.*

### **In Full and Effective Compliance**

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

To assess Phase 2 compliance with this Paragraph, we review a sample of daily shift rosters for the three months of the reporting period. We examine rosters to ensure that Patrol supervisors are not assigned more personnel than they can effectively supervise. We base our findings on the sample of rosters requested for the quarter. We review rosters to ensure supervisors oversee no more than 10 persons; this could include a combination of deputies, Deputy Service Aides (DSAs), and Posse members. We consider any shift where a supervisor had more than 10 persons to be noncompliant, as per this Paragraph's requirement. In addition, we monitor submissions by Patrol supervisors indicating the shifts where the span of control was exceeded. As per MCSO policy, supervisors are required to document shifts where the span of control was exceeded in a memorandum to the District Commander.

To verify Phase 2 compliance with this Paragraph, we reviewed monthly rosters and shift rosters for the third quarter of 2022. For July, we reviewed a sample of shift rosters from Districts 1, 2, and 3. For August, we reviewed a sample of shift rosters from Districts 4 and 7, and Lake Patrol. For September, we reviewed a sample of shift rosters from Districts 1, 2, and 3. Our reviews of monthly and daily rosters indicated that deputies were assigned to a single consistent supervisor, and deputies worked the same shifts as their supervisors. Our reviews of shift rosters for this quarter did not reveal any violations of this Paragraph.

For July, our reviews of the sample of 18 shift rosters did not reveal any violations of this Paragraph. For July, District 1 submitted five span of control memos. Three memos from three different dates documented that three different sergeants supervised nine deputies each during their shifts. One memo documented that a sergeant supervised nine deputies and one DSA. Another memo documented that a sergeant supervised 10 deputies and one DSA. District 3 submitted one span of control memo for a shift where a supervisor had nine deputies and one DSA. Districts 2, 4, and 7, and Lake Patrol did not submit any span of control memos for July.

For August, our reviews of the sample of 18 shift rosters did not reveal any violations of this Paragraph. District 1 submitted two span of control memos. The memos were for two shifts on different dates. The first memo documented a shift where a supervisor had nine deputies and one

Posse member. The second memo documented a shift where a supervisor had 10 deputies. District 2 submitted one span of control memo where a supervisor had 12 deputies during the shift. District 3 submitted two span of control memos. The first memo documented a shift where a supervisor had nine deputies. The second memo documented a shift where a supervisor had 10 deputies. Districts 4 and 7, and Lake Patrol did not submit any span of control memos for August.

For September, our reviews of the sample of 18 shift rosters did not reveal any violations of this Paragraph. District 1 submitted two span of control memos. In one shift, a District 1 supervisor had eight deputies and one Posse member. On another shift, a District 1 supervisor had 10 deputies. District 2 submitted five span of control memos. In one shift, a District 2 supervisor had 10 deputies. On another shift, a District 2 supervisor had nine deputies. On another shift, a District 2 supervisor had 10 deputies and two Posse members. On another shift, a District 2 supervisor had 11 deputies. On another shift, a District 2 supervisor had 10 deputies. Districts 3, 4, and 7 and Lake Patrol did not submit any span of control memos.

For the third quarter of 2022, we reviewed 54 shifts to determine compliance. In our sample reviews, we found that all of the 54 shifts met the requirements of this Paragraph. The compliance rate for this quarter was 100%. For the third quarter of 2022, MCSO was in compliance with the requirements of this Paragraph.

***Paragraph 267.** Supervisors shall be responsible for close and effective supervision of deputies under their command. Supervisors shall ensure that all deputies under their direct command comply with MCSO policy, federal, state and local law, and this Court's orders.*

**Phase 1:** In compliance

- GB-2 (Command Responsibility), most recently amended on June 28, 2019.

**Phase 2:** In compliance

Close and effective supervision requires that supervisors consistently apply the concepts established in several Paragraphs of the First Order. There are requirements covered in other Paragraphs that directly concern Paragraph 267, and must therefore be in compliance for MCSO to establish compliance with this Paragraph. We have determined that for MCSO to meet the requirements of this Paragraph, it must achieve compliance with Paragraphs 83, 85, 89, 90, 91, 93, and 96. During the previous reporting period, we issued a noncompliance warning for Paragraph 85. For this quarter, we issued a noncompliance warning for Paragraphs 83 and 96. This marks the second consecutive quarter during which MCSO has not been in compliance with all of the Paragraphs we review for compliance with this Paragraph. For this reporting period, MCSO is not in compliance with this Paragraph. For this reporting period, we will issue a noncompliance warning for Paragraph 267, since not all required Paragraphs were in compliance.

**Paragraph 268.** *During the term that a Monitor oversees the Sheriff and the MCSO in this action, any transfer of sworn personnel or supervisors in or out of the Professional Standards Bureau, the Bureau of Internal Oversight, and the Court Implementation Division shall require advanced approval from the Monitor. Prior to any transfer into any of these components, the MCSO shall provide the Court, the Monitor, and the parties with advance notice of the transfer and shall produce copies of the individual's résumé and disciplinary history. The Court may order the removal of the heads of these components if doing so is, in the Court's view, necessary to achieve compliance in a timely manner.*

**Phase 1:** In compliance

- Court Implementation Division Operations Manual, most recently revised on November 13, 2019.
- Professional Standards Bureau Operations Manual, most recently amended on December 13, 2018.

**Phase 2:** In compliance

During the third quarter of 2022, MCSO did not submit any requests for transfers into PSB, CID, or BIO.

## Section 15: Document Preservation and Production

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### COURT ORDER XVIII. DOCUMENT PRESERVATION AND PRODUCTION

**Paragraph 269.** *The Sheriff shall ensure that when the MCSO receives a document preservation notice from a litigant, the MCSO shall promptly communicate that document preservation notice to all personnel who might possibly have responsive documents.*

**Phase 1:** In compliance

- GD-9 (Litigation Initiation, Document Preservation, and Document Production Notices), most recently amended on September 15, 2021.
- GD-9 User Guide, most recently amended on November 5, 2020.

**Phase 2:** Not in compliance

To verify MCSO's Phase 2 compliance with this Paragraph, we reviewed monthly submissions of document preservation notices to MCSO employees. The data reviewed for this reporting period included June, July and August 2022, as per an agreement that we reached with MCSO to stagger our document requests for this Paragraph due to the large volume of data that MCSO had to provide prior to our site visits.

Document preservation is set in motion when a party sends a litigation hold notice or written directive to MCSO requesting the preservation of relevant documents or records and electronically stored information (ESI), in anticipation of future litigation against the agency. MCSO's Legal Liaison Section (LLS) manages litigation holds through Open Axes, a software program. Upon the receipt of a litigation hold, which is usually sent by the Maricopa County Attorney's Office (MCAO), the LLS inputs the data into Open Axes which conducts a search for responsive documents within MCSO drives. The system also identifies potential document custodians, which are later filtered by an LLS employee. The LLS then serves the custodians with a legal hold in electronic format, known as a Document Preservation Notice, within five business days. Upon receipt of the Open Axes email with the Document Preservation Notice, MCSO custodians must acknowledge receipt of the request and then complete a questionnaire that identifies responsive documents, both electronic and hardcopies; and preserve them in the manner in which they are kept in the course of business.

We conducted our site visit remotely in October 2022. For this Paragraph, we reviewed all files provided by MCSO through ShareFile. We reviewed a sample of the third-party source documents that generate the litigation holds that the LLS receives from MCAO and third parties. The Document Preservation Notices that were sent out were all distributed in a timely manner to the custodians who may have responsive documents.

The LLS emails the Document Preservation Notice and requests the completion of the Document Preservation Questionnaire via Open Axes. The Document Preservation Questionnaire requires employees to: 1) acknowledge receipt of the document preservation; 2) acknowledge their responsibility to preserve records; 3) provide details regarding what they have done to research

responsive records, documents, or ESI; and 4) identify what records, documents, or ESI they are preserving. GD-9 requires that the Document Preservation Questionnaire be completed within 10 business days and provides a warning regarding the consequences of not preserving records. During this reporting period, MCSO employees have returned the Document Preservation Questionnaire, within the required 10 business days 96% of the time.

In February 2021, MCSO learned that due to a technical issue caused by the migration of data from the legacy system to One Drive and a new, on-premise storage array (Qumulo), Open Axes (OA) was not able to perform searches into the documents moved to One Drive and Qumulo. Consequently, from August 2020-February 2021, documents on these new platforms were not searched by the software for potentially responsive documents to preservation requests. According to MCSO, the data migration was required because legacy hardware had reached the end of its lifecycle and was beginning to degrade. The LLS has been working with the Technology Management Bureau and the vendor; and MCSO informed us that by the end of June 2021, Open Axes will be able to perform the searches in the new systems going forward. To address any potential data that may have been missed in the searches performed between August 2020-June 2021, the LLS opted to rerun all the searches initiated during that time.

In January 2022, MCSO informed us that the agency had a delay in the rerun of searches because it had to wait for the Open Axes vendor to be able to start the refresh, so it could run parallel with the Global Index (previously the U and W drives). The searching of OneDrive accounts had an issue with the filters not showing the files found, although the Open Axes technicians noted that the files existed. In April and July 2022, MCSO informed us that the agency was in the process of indexing the two last folders, and then the agency would begin the rerun of searches once completed. On October 5, 2022, MCSO informed us that it was working with the vendor to address outstanding issues with the search and tagging functions within the system.

In our previous quarterly status report, we warned MCSO that if it failed to complete the indexing of the folders and had not commenced the rerun of searches, we would withdraw compliance for this Paragraph. During a telephone call with the Director of the Administrative Services Division on November 30, 2022, MCSO confirmed that the indexing had been completed. However, the rerun of searches has not yet started due to technical issues that the OA vendor has not been able to resolve.

MCSO is procuring a different product and vendor for document production and preservation as a result of the problems encountered with OA and the vendor. This is an appropriate approach considering the difficulties encountered throughout this process. However, we must hold MCSO accountable for the delay of almost two years in reaching this determination. We have, therefore, changed our Phase 2 compliance finding to not in compliance. The LLS has committed to keep us apprised on a monthly basis of the status of the indexing and the new vendor.

**Paragraph 270.** *The Sheriff shall ensure that when the MCSO receives a request for documents in the course of litigation, it shall:*

- a. *promptly communicate the document request to all personnel who might possibly be in possession of responsive documents;*
- b. *ensure that all existing electronic files, including email files and data stored on networked drives, are sequestered and preserved through a centralized process; and*
- c. *ensure that a thorough and adequate search for documents is conducted, and that each employee who might possibly be in possession of responsive documents conducts a thorough and adequate search of all relevant physical and electronic files.*

**Phase 1:** In compliance

- Administrative Services Division Operations Manual, most recently amended on November 14, 2022.
- GD-9 (Litigation Initiation, Document Preservation, and Document Production Notices), most recently amended on September 15, 2021.
- GD-9 User Guide, most recently amended on November 5, 2020.
- GM-1 (Electronic Communications, Data and Voicemail), most recently amended on January 12, 2022.

**Phase 2:** Not in compliance

To verify MCSO's Phase 2 compliance with this Paragraph, we reviewed monthly submissions of requests for documents to MCSO employees for the reporting period and documents drafted by the LLS in search of documents from other MCSO Divisions. For this reporting period, we identified a sample of document requests and requested a copy of the responsive documents sequestered and/or produced. The data reviewed for this reporting period included June, July and August 2022, as per an agreement we reached with MCSO to stagger our document requests for this Paragraph. This was due to the large volume of data that MCSO had to provide prior to our site visits.

Paragraph 270.a. requires prompt communication of document requests to all personnel who could possibly be in possession of responsive documents. GD-9 requires the LLS to enter the data into a tracking system within five business days of receipt and to draft a Document Production Notice within five additional business days. The LLS is required, within five business days, to respond to the request for production if sourced within LLS, or to forward to the required MCSO Division for production. The Divisions have 10 days to produce the data requested. In 100% of the cases, the LLS promptly communicated document requests to personnel who might be in possession of responsive documents.

Our review revealed that MCSO is manually forwarding the Document Production Notices in a timely manner to all of its Divisions. In addition, MCSO is sending the Document Production Acknowledgement Questionnaire (Attachment B), to all employees. In 100% of the cases, the personnel who provided responsive documents properly completed Attachment B.

Paragraph 270.b. requires that all responsive ESI be stored, sequestered, and preserved by MCSO through a centralized process. MCSO performs the searches through a centralized process established by the LLS. The preservation of the data is completed at the Division that has the actual document while the notation is made in the Open Axes program, which aids the LLS in the case management. LLS can now create a case, assign a case number, and trigger time alerts to the custodians of documents that LLS identifies through the system. Open Axes performs searches on MCSO's OneDrive and on-premises storage array, which are shared among Headquarters and the Districts. Documents found in any additional servers are kept in their servers by the document custodians who notify LLS. MCSO continues to manage litigation hold cases through Open Axes; all cases for this reporting period were managed through Open Axes.

The centralized process established by MCSO requires that all electronic data be sequestered and secured so as not to be purged. For this Paragraph, we review the data and visit MCSO areas to ensure that personnel are informed of the duty to preserve the data in both electronic and paper format, and that the employees are preserving the data. For this reporting period, because we were unable to travel to Maricopa County, we were unable to visit areas where hardcopies were kept in different MCSO areas. However, we added a quarterly request from the LLS Commander for a certification that MCSO is sequestering the hard copies of documents responsive to the Document Preservation Notices. We randomly identified a sample from the quarterly data for this purpose. On October 20, 2022, the LLS Commander informed us that MCSO properly preserved the hardcopies for this reporting period with the exception of two files, for a 66% compliance. When we resume our in-person site visits, we will continue to verify that the hardcopies are being preserved.

Paragraph 270.c. requires that MCSO conduct an adequate search for documents, and that each employee who might possibly be in possession of responsive documents conducts a thorough and adequate search of all relevant physical and electronic files. We reviewed a sample of responsive documents for this reporting period, and MCSO identified responsive documents to the document production notices in all cases we reviewed.

Due to technical issues, we have been deferring compliance with this Paragraph since our twenty-eighth quarterly status report, filed on August 25, 2021, over one year ago. In our previous quarterly status report, we warned MCSO that if it failed to complete the indexing of the folders and had not commenced the rerun of searches, we would withdraw compliance. During a telephone call with the Director of the Administrative Services Division on November 30, 2022, MCSO confirmed that the indexing had been completed. However, the rerun of searches has not yet started due to technical issues that the OA vendor has not been able to resolve.

MCSO is procuring a different product and vendor for document production and preservation as a result of the problems encountered with OA and the vendor. This is an appropriate approach considering the difficulties encountered throughout this process. However, we must hold MCSO accountable for the delay of almost two years in reaching this determination. We have, therefore, changed our Phase 2 compliance finding to not in compliance. The LLS has committed to keep us apprised on a monthly basis of the status of the rerunning of searches and the new vendor.

**Paragraph 271.** *Within three months of the effective date of this Order, the Sheriff shall ensure that the MCSO Compliance Division promulgates detailed protocols for the preservation and production of documents requested in litigation. Such protocols shall be subject to the approval of the Monitor after a period of comment by the Parties.*

**Phase 1:** In compliance

- GD-9 (Litigation Initiation, Document Preservation, and Document Production Notices), most recently amended on September 15, 2021.
- Administrative Services Division Operations Manual, most recently amended on November 14, 2022.

**Phase 2:** In compliance

On June 17, 2019, MCSO published the Administrative Services Division Operations Manual, which details the protocols for the preservation and production of documents requested in litigation. The manual was last amended on November 14, 2022.

**Paragraph 272.** *The Sheriff shall ensure that MCSO policy provides that all employees must comply with document preservation and production requirements and that violators of this policy shall be subject to discipline and potentially other sanctions.*

**In Full and Effective Compliance**

During this reporting period, the data revealed that no internal investigations were completed against any MCSO employee for failure to preserve or produce documents.

On September 30, 2022, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

## Section 16: Additional Training

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### **COURT ORDER XIX. ADDITIONAL TRAINING**

*Paragraph 273. Within two months of the entry of this Order, the Sheriff shall ensure that all employees are briefed and presented with the terms of the Order, along with relevant background information about the Court's May 13, 2016 Findings of Fact, (Doc. 1677), upon which this Order is based.*

#### **In Full and Effective Compliance**

MCSO previously delivered this training on the E-Policy platform. All personnel (100%) determined to be applicable by CID have received this training.

After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

## Section 17: Complaints and Misconduct Investigations Relating to Members of the Plaintiff Class

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### **COURT ORDER XX. COMPLAINTS AND MISCONDUCT INVESTIGATIONS RELATING TO MEMBERS OF THE PLAINTIFF CLASS**

*Paragraph 274.* In light of the Court's finding that the MCSO, and in particular Sheriff Arpaio and Chief Deputy Sheridan, willfully and systematically manipulated, misapplied, and subverted MCSO's employee disciplinary policies and internal affairs processes to avoid imposing appropriate discipline on MCSO deputies and command staff for their violations of MCSO policies with respect to members of the Plaintiff class, the Court further orders as follows:

#### **A. Investigations to be Overseen and/or Conducted by the Monitor**

*Paragraph 275.* The Monitor is vested with the authority to supervise and direct all of the MCSO's internal affairs investigations pertaining to Class Remedial Matters. The Monitor is free from any liability for such matters as is set forth in ¶ 144 of the Supplemental Permanent Injunction.

*Paragraph 276.* The Monitor shall have the authority to direct and/or approve all aspects of the intake and investigation of Class Remedial Matters, the assignment of responsibility for such investigations including, if necessary, assignment to his own Monitor team or to other independent sources for investigation, the preliminary and final investigation of complaints and/or the determination of whether they should be criminally or administratively investigated, the determination of responsibility and the imposition of discipline on all matters, and any grievances filed in those matters.

#### **In Full and Effective Compliance**

The Second Order requires oversight by the Monitor for all internal investigations determined to be Class Remedial Matters (CRMs). The Professional Standards Bureau (PSB) now schedules meetings every two weeks to discuss existing and incoming complaints to determine which, if any, could be CRMs. During these meetings, PSB personnel discuss cases pending a CRM decision, cases determined to be CRMs, and any cases where the decision may be made that the case would not be classified as a CRM. The PSB Commander determines the classification of the cases. A member of our Team attends all of these meetings to provide the oversight required for this Paragraph.

At the end of the July-September 2016 reporting period, PSB had reviewed 442 administrative investigations that were open as of July 20, 2016; and determined that 42 of them met the basic criteria for CRMs. These cases were reviewed during the scheduled CRM meetings. In addition, we randomly selected an additional 52 cases from the 400 remaining pending cases; and concurred with PSB's assessment that the cases did not meet the basic criteria for CRMs. In

addition to the 42 cases determined to be potential CRMs from the pending case list as of July 20, 2016, PSB identified an additional 10 cases that were potential CRM cases. At the end of the first reporting period after the Court's Second Order, nine cases had been determined to be CRMs; and one other was pending a CRM decision. The remaining cases reviewed were determined not to be CRMs.

At the end of this reporting period, there was a total of 577 cases that have been reviewed as possible CRMs; and 122 cases that have been determined to be CRMs since the July 20, 2016 Court Order. At the end of this reporting period, MCSO had completed and submitted a total of 110 CRM cases. Twelve were pending completion.

Of the CRM cases that have been closed to date with findings of sustained misconduct and reviewed by our Team, 12 have involved employees who are deceased or left MCSO employment prior to the completion of the investigation or the disciplinary process. Thirty-eight have involved current employees of MCSO. Seven of the cases closed to date involved a sustained finding of misconduct involving bias related to the Plaintiffs' class: five sustained allegations of an inappropriate and biased comment; and two sustained allegations of bias-based policing.

During the scheduled meetings, case investigators continue to provide investigative updates on all cases that could be, or are, CRMs. Their briefings are thorough, and they continue to be responsive to any questions or input from members of our Team. In all cases where we have provided oversight since July 20, 2016, we concurred with the decisions made by the PSB Commander regarding the case classifications and findings based on the briefings provided during the CRM meetings. Where appropriate, we also approved the discipline in these cases. During this reporting period, we have continued discussions with PSB personnel regarding areas of improvement that may enhance investigations, as well as the resolutions of these cases. We plan to continue holding these meetings moving forward.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

*Paragraph 277. This authority is effective immediately and shall remain vested in the Monitor until the MCSO's internal affairs investigations reach the benchmarks set forth in ¶ 288 below. With respect to Class Remedial Matters, the Monitor has plenary authority, except where authority is vested in the Independent Investigative and Disciplinary Authorities separately appointed by the Court, as is further set forth in ¶¶ 296–337 below.*

***Paragraph 278.** The Sheriff shall alert the Monitor in writing to all matters that could be considered Class Remedial Matters, and the Monitor has the authority to independently identify such matters. The Monitor shall provide an effective level of oversight to provide reasonable assurance that all Class Remedial Matters come to his attention.*

**In Full and Effective Compliance**

Since the first CRM meeting held on August 17, 2016, PSB has consistently completed the required notification to us regarding the cases that could be considered CRMs. A Monitoring Team member has attended every CRM meeting with PSB where these matters are discussed and personally reviewed a number of the cases that were pending on July 20, 2016; and our Team member reviews the new cases that are presented at each meeting. There has been no need for us to independently identify CRMs, as PSB consistently properly identifies and reports these cases as required.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

***Paragraph 279.** The Monitor shall have complete authority to conduct whatever review, research, and investigation he deems necessary to determine whether such matters qualify as Class Remedial Matters and whether the MCSO is dealing with such matters in a thorough, fair, consistent, and unbiased manner.*

**In Full and Effective Compliance**

During the scheduled CRM meetings attended by a Monitoring Team member, PSB has consistently properly identified cases that could be, or are, CRMs. PSB personnel brief each case at these meetings, and their briefings have included all appropriate information. They have been responsive to any questions from our Team members during the meetings, and have responded appropriately to the recommendations we have offered. There has been no need for us to independently conduct any review, research, or investigation.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 280.** *The Monitor shall provide written notice to the Court and to the parties when he determines that he has jurisdiction over a Class Remedial Matter. Any party may appeal the Monitor's determination as to whether he has jurisdiction over a Class Remedial Matter to this Court within seven days of the Monitor's notice. During the pendency of any such appeal the Monitor has authority to make orders and initiate and conduct investigations concerning Class Remedial Matters and the Sheriff and the MCSO will fully comply with such action by the Monitor.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

During this reporting period, cases involving both sworn and non-sworn members of MCSO have continued to be reviewed as possible CRMs, when appropriate. There were no appeals by any Parties regarding any of the CRM classifications.

**Paragraph 281.** *Subject to the authority of the Monitor, the Sheriff shall ensure that the MCSO receives and processes Class Remedial Matters consistent with: (1) the requirements of this Order and the previous orders of this Court, (2) MCSO policies promulgated pursuant to this Order, and (3) the manner in which, pursuant to policy, the MCSO handles all other complaints and disciplinary matters. The Sheriff will direct that the Professional Standards Bureau and the members of his appointed command staff arrive at a disciplinary decision in each Class Remedial Matter.*

**Phase 1:** In compliance

- GC-16 (Employee Grievance Procedures), most recently amended on December 8, 2021.
- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- Administrative Services Division Operations Manual, most recently amended on November 14, 2022.
- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2:** Not in compliance

To evaluate Phase 2 compliance with this Paragraph, a Monitoring Team member has attended each meeting conducted by PSB to discuss Class Remedial Matters.

The Plaintiffs and the Plaintiff-Intervenor have forwarded to us concerns about certain CRM investigations submitted by MCSO for our review. Upon further review of some of the cases they have provided, we concluded that, in some, additional scrutiny of these investigations by PSB was warranted. We continue to meet with PSB to discuss concerns and provide information regarding areas where we believe improvements can be made. Our discussions continue to

include: ensuring that credibility assessments, where appropriate, are conducted and well-documented in reports; that the appropriate standard of proof is considered and properly documented in reports; that in the event disparate treatment is at issue in a case, the employee's history is reviewed to determine if there is any pattern, and where necessary, additional interview questions are asked; and that if a single employee has repeated allegations of similar misconduct, a review is conducted to determine if there is any pattern that needs to be addressed. We have also discussed potential training opportunities for PSB investigators on both disparate treatment and credibility assessments. We will continue to meet with PSB to address any concerns we may identify with CRM investigations and to discuss opportunities to improve the overall quality of these and all other administrative investigations.

During the last reporting period, we reviewed six CRM cases completed by MCSO. We concurred with the findings of the PSB Commander. During this reporting period, we reviewed four CRM cases completed by PSB. In all four cases, we concur with the findings of the PSB Commander.

We meet with PSB every two weeks to identify cases that should be considered CRMs. We also track the progress of those cases as they are investigated, reviewed, and finalized. Each step of the process requires review and approval by our Team. Of the four finalized CRM investigations we reviewed for this reporting period, one (25%) was completed within the 85-day timeframe. One (25%) was also finalized with the 180-day timeframe.

Two of the CRM cases we reviewed for this reporting period resulted in findings of not sustained or unfounded. One of the investigations involved the actions of a sworn employee at a call for service. PSB conducted a thorough investigation, and we agree with the findings of unfounded in this case. In the second case, two inmates alleged that they were treated differently by a Detention employee due to their ethnicity. PSB conducted a thorough investigation, and we concur with the findings of not sustained in this case.

Two of the CRM cases we reviewed resulted in sustained findings. One, an externally generated complaint involving a Detention employee, had sustained findings for inappropriate and biased comments. The other, an internally generated complaint involving sworn personnel, had sustained findings for multiple violations of MCSO policy. In both of these investigations, we believe the investigations were thorough and that the findings of PSB were supported by the appropriate standard of proof. Both resulted in discipline that is consistent with MCSO policies.

**Paragraph 282.** *The Sheriff and/or his appointee may exercise the authority given pursuant to this Order to direct and/or resolve such Class Remedial Matters, however, the decisions and directives of the Sheriff and/or his designee with respect to Class Remedial Matters may be vacated or overridden in whole or in part by the Monitor. Neither the Sheriff nor the MCSO has any authority, absent further order of this Court, to countermand any directions or decision of the Monitor with respect to Class Remedial Matters by grievance, appeal, briefing board, directive, or otherwise.*

**Phase 1:** In compliance

- GC-16 (Employee Grievance Procedures), most recently amended on December 8, 2021.
- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- Administrative Services Division Operations Manual, most recently amended on November 14, 2022.
- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2:** In compliance

There were no CRM cases completed during this, or previous reporting periods, in which the Sheriff and/or his appointee exercised their authority to resolve CRMs, which we needed to vacate or override.

**Paragraph 283.** *The Monitor shall review and approve all disciplinary decisions on Class Remedial Matters.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

At the end of this reporting period, MCSO has completed a total of 110 CRM cases since July 20, 2016. We reviewed four of these during this reporting period. Two of the completed cases had sustained findings. In both, we approved MCSO's disciplinary decisions.

**Paragraph 284.** *The Sheriff and the MCSO shall expeditiously implement the Monitor's directions, investigations, hearings, and disciplinary decisions. The Sheriff and the MCSO shall also provide any necessary facilities or resources without cost to the Monitor to facilitate the Monitor's directions and/or investigations.*

**Phase 1:** In compliance

- GC-16 (Employee Grievance Procedures), most recently amended on December 8, 2021.
- GC-17 (Employee Disciplinary Procedures), most recently amended on November 17, 2022.
- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- Administrative Services Division Operations Manual, most recently amended on November 14, 2022.
- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2:** In compliance

During this and previous reporting periods, a Monitoring Team member has attended all scheduled CRM meetings conducted in an appropriate location determined by MCSO. PSB continues to provide a password and access to the IAPro system to a member of our Team so that we can complete independent case reviews if necessary.

PSB personnel continue to be professional and responsive to all input, questions, or concerns we have raised.

**Paragraph 285.** *Should the Monitor decide to deviate from the Policies set forth in this Order or from the standard application of the disciplinary matrix, the Monitor shall justify the decision in writing and place the written explanation in the affected employee's (or employees') file(s).*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

Since we began monitoring CRM cases in July 2016, there have been a total of 50 cases with sustained findings. Seven have sustained findings on three separate deputies who are deceased, and five involve deputies who left MCSO employment prior to the determination of discipline. Thirty-eight involve sustained findings against current MCSO employees. All 38 cases resulted in appropriate sanctions based on MCSO policy and the Discipline Matrices in effect at the time the investigations were conducted. No action on our part has been necessary relative to this Paragraph.

**Paragraph 286.** *Should the Monitor believe that a matter should be criminally investigated, he shall follow the procedures set forth in ¶¶ 229–36 above. The Commander of the Professional Standards Bureau shall then either confidentially initiate a Professional Standards Bureau criminal investigation overseen by the Monitor or report the matter directly and confidentially to the appropriate prosecuting agency. To the extent that the matter may involve the Commander of the Professional Standards Bureau as a principal, the Monitor shall report the matter directly and confidentially to the appropriate prosecuting agency. The Monitor shall then coordinate the administrative investigation with the criminal investigation in the manner set forth in ¶¶ 229–36 above.*

**Phase 1:** In compliance

- GH-2 (Internal Investigations), most recently amended on October 25, 2022.
- Professional Standards Bureau Operations Manual, most recently amended on December 31, 2019.

**Phase 2:** In compliance

During this reporting period, there were four CRM cases submitted for our review. None of the four had potential criminal violations. No action on our part relative to this Paragraph was necessary.

**Paragraph 287.** *Any persons receiving discipline for any Class Remedial Matters that have been approved by the Monitor shall maintain any right they may have under Arizona law or MCSO policy to appeal or grieve that decision with the following alterations:*

- a. *When minor discipline is imposed, a grievance may be filed with the Sheriff or his designee consistent with existing MCSO procedure. Nevertheless, the Sheriff or his designee shall immediately transmit the grievance to the Monitor who shall have authority to and shall decide the grievance. If, in resolving the grievance, the Monitor changes the disciplinary decision in any respect, he shall explain his decision in writing.*
- b. *disciplined MCSO employee maintains his or her right to appeal serious discipline to the Maricopa County Law Enforcement Merit System Council to the extent the employee has such a right. The Council may exercise its normal supervisory authority over discipline imposed by the Monitor.*

**In Full and Effective Compliance**

Fifty completed CRM cases have had sustained findings of misconduct since the issuance of the Second Order. We have concurred with all of MCSO's sustained findings.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 288.** *The Monitor's authority over Class Remedial Matters will cease when both:*

- a. The final decision of the Professional Standards Bureau, the Division, or the Sheriff, or his designee, on Class Remedial Matters has concurred with the Monitor's independent decision on the same record at least 95% of the time for a period of three years.*
- b. The Court determines that for a period of three continuous years the MCSO has complied with the complaint intake procedures set forth in this Order, conducted appropriate internal affairs procedures, and adequately investigated and adjudicated all matters that come to its attention that should be investigated no matter how ascertained, has done so consistently, and has fairly applied its disciplinary policies and matrices with respect to all MCSO employees regardless of command level.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

PSB is responsible for the investigation of all CRM cases and has continued to appropriately identify cases that could be, or are, CRMs. PSB personnel are responsive to any concerns or questions we have raised, and they provide detailed information and updates in the scheduled briefings.

During this reporting period, we reviewed four completed CRM case, and did not identify any substantive investigative deficiencies with these investigations.

MCSO is in compliance with the requirements of this Paragraph.

**Paragraph 289.** *To make the determination required by subpart (b), the Court extends the scope of the Monitor's authority to inquire and report on all MCSO internal affairs investigations and not those merely that are related to Class Remedial Matters.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

During this reporting period, we reviewed 93 administrative misconduct investigations, 68 service complaints, and five criminal misconduct investigations. The PSB Commander did not use the authorized diversion process to address any internally generated complaints during this reporting period.

We found all five criminal investigations in compliance with all requirements. Of the 68 service complaints, after initial review by District or PSB personnel, eight were appropriately converted to administrative misconduct investigations. Of the remaining 60 service complaints, we concurred with the decision of the PSB Commander in 59. In one, though we concur with the designation as a service complaint, the complainant was not contacted in a timely manner. Of the total 60 service complaints, 59 (99%) were appropriately handled by PSB. Of the 93 administrative misconduct investigations we reviewed, 24 (26%) were completed and submitted by the investigator within the 60- or 85-day requirement or had an acceptable extension request. As we have noted previously, we assess justifications for any extensions or other delays based on investigative considerations, not workload. This was a decrease from the 33% compliance during the last reporting period.

There was one completed administrative misconduct investigations submitted for compliance with Paragraph 249 (investigatory stops). There were three investigations we reviewed for compliance with Paragraph 33 (bias policing). Four were also completed and reviewed for compliance with Paragraph 275 (CRMs) during this reporting period.

We found that PSB was in overall compliance in 18 (26%) of the 69 investigations we reviewed. Of the eight investigations we reviewed that were conducted by outside vendors, one (13%) was in full compliance. Of the 16 investigations we reviewed that were conducted by Divisions and Districts outside of PSB, none were in full compliance. Overall compliance for all administrative misconduct investigations reviewed during this reporting period was 20%, a decrease from the 28% compliance during the last reporting period.

During each of our site visits, we meet with PSB personnel to discuss the deficiencies in those investigations conducted by both their personnel, outside vendors, and Divisions outside PSB. In July 2020, we also began meeting with the Deputy Chiefs who have oversight for investigations conducted outside of PSB. Our intent for these meetings is to have meaningful discussion about deficiencies we continue to find, the actions being taken to address the ongoing concerns, and other ideas MCSO might have for addressing future deficiencies. These meetings have continued to result in good dialogue about our concerns and the efforts of MCSO personnel to correct identified deficiencies. We did note some improvement with District and Division cases this reporting period, and are hopeful this improvement will be sustained and further increased moving forward.

***Paragraph 291.** The Monitor shall report to the Court, on a quarterly basis, whether the MCSO has fairly, adequately, thoroughly, and expeditiously assessed, investigated, disciplined, and made grievance decisions in a manner consistent with this Order during that quarter. This report is to cover all internal affairs matters within the MCSO whether or not the matters are Class Remedial Matters. The report shall also apprise the Court whether the MCSO has yet appropriately investigated and acted upon the misconduct identified in the Court's Findings of Fact, whether or not such matters constitute Class Remedial Matters.*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

This report, including all commentary regarding MCSO's compliance with investigative and disciplinary requirements, serves as our report to the Court on these matters. An overall summary of our compliance observations and findings is provided below.

During this reporting period, we reviewed 93 administrative misconduct investigations and five criminal misconduct investigations. All five of the criminal investigations were in compliance with the Second Order. Of the 98 total administrative and criminal misconduct investigations we reviewed, 24 (24%) were in full compliance with the Second Order, a decrease in overall compliance from 30% during the last quarter. Of the 93 administrative investigations, 19 (20%) were in full compliance with the Second Order, a decrease from 28% during the last reporting period.

In 2016, PSB provided us with a memorandum describing PSB's efforts in meeting the requirements of this Paragraph related to the Court's Findings of Fact. MCSO had outsourced three cases to another law enforcement agency, and an additional four investigations were pending outsourcing to an outside investigator. These cases were outsourced due to the involvement of the former Chief Deputy, or other conflicts of interest identified by MCSO, and included the investigations identified in Paragraph 300. MCSO processed a Request for Proposal and retained an outside investigator who met the requirements of Paragraphs 167.iii and 196 to conduct the investigations identified. One potential misconduct case identified in the Court's Findings of Fact was retained and investigated by PSB, as no identifiable conflict of interest appeared to exist.

PSB provided us with a document sent by the Independent Investigator assigned by the Court to investigate, or reinvestigate, some of the misconduct that is related to the Plaintiffs' class. In this document, the Independent Investigator clarified his intent to investigate the matters assigned to him by the Court, as well as the matters that the Court determined were the discretion of the Independent Investigator. He further clarified that his investigations would include the initial misconduct alleged, as well as any misconduct that might have occurred during the process of review or issuance of discipline by MCSO personnel.

During each site visit, we meet with PSB personnel to discuss the status of those cases that have been outsourced to any contract vendor, other law enforcement agency, or other person or entity, so that we can continue to monitor these investigations and ensure that all misconduct cases, including those identified in the Findings of Fact, are thoroughly investigated. PSB has continued to keep us apprised of the status of all such investigations.

During our July 2021 site visit, PSB outsourced one additional case to the contract investigator. The contract investigator had a total of 25 cases pending completion. There were no completed cases by the contract investigator that were forwarded for our review during the last reporting period. This investigator continued to review acts of potential misconduct related to the Court's Findings of Fact in 2016, related to both this Paragraph and Paragraph 300. PSB also updated us on the status of the 25 investigations outsourced to the new contract investigation entity as part of a pilot program. One had been completed and returned to PSB. At the time of our site visit, PSB was in the process of reviewing this investigation.

During our October 2021 site visit, PSB advised that one additional case was outsourced to the contract investigator. He had 21 cases pending. Of the 25 cases outsourced as part of the pilot program, PSB advised that eight had been completed.

During our January 2022 site visit, PSB advised us that it had not outsourced any additional investigations to any outside vendor. The contract investigator had 20 cases pending. PSB advised that several of these are related to the Court's Findings of Fact in 2016 and remain in progress. Of the 25 cases outsourced as part of the pilot program with a new vendor, 14 were pending.

During our April 2022 site visit, PSB advised that they had not outsourced any additional cases to either outside vendor. The initial contract vendor had 18 cases pending, as two of his cases had been transferred to the second contract vendor for completion. We did not review any cases completed by this vendor during this reporting period. The second contract vendor completed four cases during this reporting period. MCSO was renewing the contract with this vendor.

During our July 2022 site visit, PSB advised that the Bureau had not outsourced any additional cases to either outside vendor due to potential conflicts of interest. The initial contract vendor continues to have 18 cases pending. None were completed and submitted for our review during this reporting period. The second contract vendor has been assigned a total of 38 cases. Twenty-five have been completed, and five were completed and submitted for our review during this reporting period.

During our October 2022 site visit, PSB advised that the Bureau had not outsourced any additional cases to the initial contract investigator. This investigator currently has 18 cases pending. None were submitted and reviewed by our Team during this reporting period. Twenty-two were outsourced to the second vendor being used by MCSO to assist with reduction of the backlog of cases and they now have a total of 30 cases in progress. We reviewed eight investigations conducted by this vendor during this reporting period.

The Independent Investigator has previously completed all of the investigations identified by the Court, as well as those where he initiated new investigations due to potential misconduct he identified during his reviews. All have been reviewed by our Team to ensure they complied with the Order of Court. The Independent Discipline Authority has also previously submitted his final report on those cases that had sustained findings, and we reviewed these findings. We did not make compliance findings on these cases, but we determined that both the 12 investigations specifically directed by the Court for reinvestigation, as well as the additional cases where the Independent Investigator determined an investigation should be conducted, were properly completed, and addressed the concerns identified by the Court.

**Paragraph 292.** *To make this assessment, the Monitor is to be given full access to all MCSO internal affairs investigations or matters that might have been the subject of an internal affairs investigation by the MCSO. In making and reporting his assessment, the Monitor shall take steps to comply with the rights of the principals under investigation in compliance with state law. While the Monitor can assess all internal affairs investigations conducted by the MCSO to evaluate their good faith compliance with this Order, the Monitor does not have authority to direct or participate in the investigations of or make any orders as to matters that do not qualify as Class Remedial Matters.*

### **In Full and Effective Compliance**

PSB personnel continue to inform us of ongoing criminal and administrative misconduct investigations. A member of our Team attends each CRM meeting, reviews the lists of new internal investigations, and has access to PSB's IAPro database. The only cases for which any oversight occurs during the investigative process are those that are determined to be CRMs. We review all other misconduct investigations once they are completed, reviewed, and approved by MCSO personnel.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

**Paragraph 293.** *The Monitor shall append to the quarterly reports it currently produces to the Court its findings on the MCSO's overall internal affairs investigations. The parties, should they choose to do so, shall have the right to challenge the Monitor's assessment in the manner provided in the Court's previous Order. (Doc. 606 ¶¶ 128, 132.)*

**Phase 1:** Not applicable

**Phase 2:** Not applicable

Since we began reviewing internal investigations conducted by MCSO, we have reviewed hundreds of investigations into alleged misconduct by MCSO personnel. During this reporting period, we reviewed 93 administrative misconduct investigations, 68 service complaints, and five criminal misconduct investigations. All five criminal investigations were compliant. Of the service complaints we reviewed, 67 (99%) were in compliance.

The investigative quality of PSB administrative investigations has remained high for numerous reporting periods, and we noted some improvement in District and Division cases during this reporting period. For those cases completed outside of PSB, noncompliance decreased from 42% the last reporting period to 31% this reporting period. We are hopeful that this improvement will continue.

During our October 2022 site visit, PSB advised that the closure time for an administrative investigation conducted by Divisions or Districts outside of PSB during this reporting period was 436 days, an increase from 386 days during the last reporting period. The average completion time for investigations completed by sworn personnel in PSB was 775 days, a notable decrease

from 919 days during the last reporting period; investigations conducted by Detention personnel in PSB was 617 days, a notable increase from 518 during the last reporting period; and investigations conducted by civilian investigators, who began conducting investigations in 2021, was 590 days a notable increase from 266 days at the end of 2021. For all administrative investigations conducted by MCSO, the average completion time was 588 days, an increase from 562 days during the last reporting period.

We continue to note that in some of these delayed investigations, potential evidence has been lost; investigators have been unable to locate and contact complainants, witnesses, and investigative leads; and employees' memories have been adversely impacted by the delay in their interviews. Quarter after quarter, the failure to complete investigations in a timely manner has continued to be unacceptable and a disservice to all stakeholders.

PSB was responsible for conducting 69 of the 93 total administrative misconduct investigations we reviewed for this reporting period. Of the 69 investigations conducted by PSB, one (1%) had deficiencies not including timeliness. With the inclusion of extensions, 18 (26%) were found to be in compliance. This is a decrease from the 33% compliance for the last reporting period. Of the eight investigations outsourced by PSB, two (25%) had investigative deficiencies. With the inclusion of timeliness, only one of the eight investigations was in compliance.

Sixteen investigations were conducted outside of PSB. None of these investigations were found in compliance, a decrease from 5% compliance during the last reporting period.

MCSO completed delivery of the 40-hour Misconduct Investigative Training at the end of 2017, and all sworn supervisors who investigate administrative misconduct attended the training. Refresher training on misconduct investigations has also been delivered since the initial 40-hour training. The investigative quality of PSB investigations has remained generally high. Of the 69 investigations completed by PSB, 68 (99%) were in compliance with all requirements other than timelines. With the consideration of timelines and extensions, 18 (26%) were in full compliance, a decrease from 33% during the last reporting period.

Of the 16 investigations completed outside of PSB, all were initiated after January 1, 2020, and completed in 2021 or 2022, after the increased oversight at the District and Division level began. Of the 16, five (31%) had investigative deficiencies. This is a decrease in deficiencies from the 42% during the last reporting period. With the inclusion of extensions and timelines, none of the investigations was in compliance.

As we noted in our previous reports, we must consider all requirements for investigations at the time they are submitted for our review, including their timely completion. MCSO's inability to address timely completion of investigations is an ongoing issue that continues to adversely impact the agency's compliance findings.

PSB personnel continue to be receptive to our input, and we have had many meetings and discussions regarding the investigations being conducted and the compliance for both PSB and District and Division Cases. We also discuss compliance concerns with District and Division Command personnel during our site visits. During our next site visit, we will discuss those cases that are noncompliant with MCSO; and address our concerns about the compliance findings for this reporting period. We continue to stress that compliance is not the sole responsibility of any one individual or Division – but dependent on all those who complete, review, or approve internal investigations.

We have noted in numerous previous reporting periods that MCSO's executive leadership must take the appropriate action to ensure that adequate resources are dedicated to the completion of administrative and criminal misconduct investigations. According to a document that PSB provided during the last reporting period, two sworn positions from the 2018 budget still remained unfilled. In the July 2019 budget, only civilian positions were authorized and filled. This budget approval did include three civilian investigators for PSB. There were no budget positions requested for PSB for the July 2020 or 2021 budget.

Between 2016 and 2021, the number of investigator positions assigned to PSB averaged between 24 and 26. With the addition of new civilian investigator positions and the restructuring of PSB that has returned several staff to investigative functions, at the end of this reporting period, PSB had 33 investigator positions – though ongoing transfers, promotions, and retirements cause this number to continue to fluctuate. They are currently hiring additional civilian investigators. We are hopeful that an increase in assigned personnel, along with other efforts by MCSO, will result in some positive impact on the overall backlog of cases.

***B. Investigations to be Conducted by the Independent Investigator and the Independent Disciplinary Authority***

***Paragraph 294.*** *In its Findings of Fact, (Doc. 1677), the Court identified both: (1) internal affairs investigations already completed by the MCSO that were inadequate or insufficient; (see, e.g., Doc. 1677 at ¶ 903), and (2) misconduct or alleged misconduct that had never been investigated by MCSO that should be or should have been investigated. (Id. at ¶ 904.)*

***Paragraph 295.*** *In light of MCSO's failure to appropriately investigate these matters, the Court appoints an Independent Investigator and an Independent Disciplinary Authority from the candidates set forth by the parties, and vests them with the authority to investigate and decide discipline in these matters.*

### 1. *The Independent Investigator*

**Paragraph 298.** *In assessing the existence of previously uncharged acts of misconduct that may be revealed by the Findings of Fact, the Independent Investigator does not have authority to investigate acts of misconduct that are not sufficiently related to the rights of the members of the Plaintiff class. While the Independent Investigator should identify such acts of misconduct and report those acts to the Commander of the Professional Standards Bureau, and to the Monitor for purposes of making the Monitor's assessment identified in ¶¶ 291–93 above, the Independent Investigator may not independently investigate those matters absent the authorization and the request of the Sheriff.*

**Paragraph 300.** *The following potential misconduct is not sufficiently related to the rights of the members of the Plaintiff class to justify any independent investigation:*

- a. *Uninvestigated untruthful statements made to the Court under oath by Chief Deputy Sheridan concerning the Montgomery investigation. (Doc. 1677 at ¶ 385).*
- b. *Uninvestigated untruthful statements made to the Court under oath by Chief Deputy Sheridan concerning the existence of the McKessy investigation. (Id. at ¶ 816).*
- c. *Chief Deputy Sheridan's untruthful statements to Lieutenant Seagraves made during the course of an internal investigation of Detective Mackiewicz to the effect that an investigation into the overtime allegations against Detective Mackiewicz had already been completed. (Id. at ¶ 823).*
- d. *Other uninvestigated acts of misconduct of Chief Deputy Sheridan, Captain Bailey, Sergeant Tennyson, Detective Zebro, Detective Mackiewicz, or others that occurred during the McKessy investigation. (Id. at ¶¶ 766–825).*

**Phase 1:** Not applicable

**Phase 2:** Deferred

During our January 2017 site visit, the PSB Commander assured us that all acts of misconduct that we identified and discussed during our October 2016 site visit would be provided to a contracted investigator for investigative purposes.

Since that time, MCSO has contracted with a licensed private investigator. The contract investigator possesses the requisite qualifications and experience to conduct the investigations of misconduct outlined in Paragraph 300 (a.-c.), and the additional misconduct in the Findings of Fact that directly associates with Paragraph 300 (d).

During our April 2017 site visit, we met with PSB command staff and representatives from the Maricopa County Attorney's Office (MCAO) to verify that all of the acts of misconduct that were identified in the Findings of Fact (FOF) are under investigation, either by the Court-appointed Independent Investigator or the private licensed contract investigator. Before this meeting, PSB command provided us with a roster of related acts of misconduct that PSB intended to be assigned to the contract investigator. The roster of intended assignments did not include all of the acts of misconduct that we had discussed. MCAO and PSB command personnel explained that the Court

also identified, in Paragraph 301, many of the acts of potential misconduct identified in the FOF as sufficiently related to the rights of members of the Plaintiffs' class. In Paragraph 301, the Court documented that because of this determination, investigations of the potential misconduct were justified if the Independent Investigator deemed that an investigation was warranted.

The Independent Investigator has completed all 12 of the administrative misconduct investigations specifically identified by the Court in the Second Order, and all other investigations for which he determined an administrative misconduct investigation should be conducted. The Independent Disciplinary Authority has also completed all of the discipline findings for these cases. While we did not make compliance findings for these cases, we reviewed them and found that they complied with the direction of the Court. The contract investigator retained by MCSO is still in the process of investigating several cases that were identified by the Court in 2016.

Our ability to verify that all potential misconduct outlined in the FOF has been investigated by PSB, the PSB contract investigator, or the Independent Investigator remains pending until all the investigations are completed. Once this occurs, we can determine if there is any additional misconduct identified in the FOF that still requires investigation. Finally, the PSB Commander and MCAO advised us that the acts of misconduct involving (former) Sheriff Arpaio as identified in the FOF would not be investigated by any entity, as there does not exist any statute that addresses how a Sheriff would be disciplined in the event of a sustained finding resulting from an administrative misconduct investigation.

***Paragraph 310.*** *The Monitor and the parties are directed to promptly comply with the Independent Investigator's requests for information. The Monitor and the Independent Investigator may communicate to coordinate their investigations. Nevertheless, each is independently responsible for their respective jurisdiction set forth in this Order, and each should make independent decisions within his own delegated responsibility.*

## ***2. The Independent Disciplinary Authority***

***Paragraph 337.*** *Nevertheless, when discipline is imposed by the Independent Disciplinary Authority, the employee shall maintain his or her appeal rights following the imposition of administrative discipline as specified by Arizona law and MCSO policy with the following exceptions:*

- a. When minor discipline is imposed, a grievance may be filed with the Sheriff or his designee consistent with existing MCSO procedure. Nevertheless, the Sheriff or his designee shall transmit the grievance to the Monitor who shall have authority to decide the grievance. If in resolving the grievance the Monitor changes the disciplinary decision in any respect, he shall explain his decision in writing.*
- b. A disciplined MCSO employee maintains his or her right to appeal serious discipline to the Maricopa County Law Enforcement Merit System Council to the extent the employee has such a right. The Council may exercise its normal supervisory authority over discipline imposed by the Independent Disciplinary Authority with one caveat. Arizona*

*law allows the Council the discretion to vacate discipline if it finds that the MCSO did not make a good faith effort to investigate and impose the discipline within 180 days of learning of the misconduct. In the case of any of the disciplinary matters considered by the Independent Disciplinary Authority, the MCSO will not have made that effort. The delay, in fact, will have resulted from MCSO's bad faith effort to avoid the appropriate imposition of discipline on MCSO employees to the detriment of the members of the Plaintiff class. As such, the Council's determination to vacate discipline because it was not timely imposed would only serve to compound the harms imposed by the Defendants and to deprive the members of the Plaintiff class of the remedies to which they are entitled due to the constitutional violations they have suffered at the hands of the Defendants. As is more fully explained above, such a determination by the Council would constitute an undue impediment to the remedy that the Plaintiff class would have received for the constitutional violations inflicted by the MCSO if the MCSO had complied with its original obligations to this Court. In this rare instance, therefore, the Council may not explicitly or implicitly exercise its discretion to reduce discipline on the basis that the matter was not timely investigated or asserted by the MCSO. If the Plaintiff class believes the Council has done so, it may seek the reversal of such reduction with this Court pursuant to this Order.*

### **In Full and Effective Compliance**

During this reporting period, no grievances were filed that met the criteria for transmitting to the Monitor.

On December 16, 2020, MCSO asserted Full and Effective Compliance with this Paragraph. After review, we concurred with this assertion, and neither the Plaintiffs nor the Plaintiff-Intervenor disagreed with our determination.

## Section 18: Concluding Remarks

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We assess compliance with 94 Paragraphs of the First Order, and 114 Paragraphs of the Second Order, for a total of 208 Paragraphs. MCSO is in Phase 1 compliance with 79 of the First Order Paragraphs, or 99%; and 104 of the Second Order Paragraphs, or 100%.

Including the Paragraphs in which MCSO is in Full and Effective Compliance, MCSO is in Phase 2, or operational compliance, with 74 of the First Order Paragraphs, or 79%. This is an increase of one percentage point from the last reporting period. MCSO is in Phase 2 compliance with 106 of the Second Order Paragraphs, or 93%. This is the same percentage that we found during the last reporting period.

Combining the requirements of both Orders, MCSO is in Phase 1 compliance with 183 Paragraphs, or 99%; and in Phase 2 compliance with 180 Paragraphs, or 87%.

During this reporting period, the Training Division demonstrated a more focused effort to create and approve Order-related curricula in a more timely fashion. Several curricula were revised and approved for delivery, allowing for more timely deliveries during this calendar year.

The First Order requires three separate analyses of MCSO's traffic stops: the annual analysis (TSAR); the quarterly analysis (TSQR); and the monthly analysis (TSMR). MCSO has successfully implemented two of the three: the TSAR and the TSQR. During this reporting period, MCSO published the Eighth TSQR, which analyzed the changes in observed disparities in traffic stops outcomes (i.e., stop length, citation rates, arrest rates, and search rates) over time since July 2017. As noted in our last report, we and the Parties extensively discussed the Sixth TSQR, including during an experts' call during this reporting period. As a result, TSQR6 was modified and republished in the following reporting period.

As has been previously documented, MCSO has been working collaboratively with us, the Plaintiffs, and the Plaintiff-Intervenor to finalize and operationalize the required monthly analysis, or TSMR. MCSO began piloting the analysis in April 2021. The final TSMR methodology was approved earlier this year, approximately one year after the pilot began, and after extensive input from all involved – including several virtual meetings with experts representing MCSO, the Plaintiffs, the Plaintiff-Intervenor, and our Team. During this reporting period, we established October 2022 as the target to have the policies and associated training finalized and approved, thus ending the pilot phase of the TSMR implementation. MCSO did not fully meet this target, and during the October site visit we outlined the remaining issues MCSO needed to address to formally end the pilot process.

In February 2021, MCSO learned that due to a technical issue caused by the migration of data from one data storage system to another, the agency's document preservation software, Open Axes, was not able to perform certain searches for documents in response to document preservation requests. MCSO's Legal Liaison Section (LLS) has been working with the Technology Management Bureau and the Open Axes vendor to resolve this issue. Well over one year has passed since this issue was discovered; and in our last report, we advised MCSO that if this issue was not resolved during this reporting period, it would adversely affect the agency's compliance with Paragraphs 269 and 270. Consequently, we have changed MCSO's Phase 2

compliance rating for Paragraphs 269 and 270 from deferred to not in compliance. We have been deferring compliance since our 28<sup>th</sup> quarterly status report, to allow MCSO to work through these issues with its Technology Bureau and the vendor. However, this change is now warranted considering that we have not seen a final resolution to the technical problems which were first raised in February 2021.

In recent reporting periods, we have noted an improvement in the documentation of seized evidence or contraband on the Vehicle Stop Contact Forms (VSCFs). Although MCSO is not yet in compliance with this subparagraph, MCSO has demonstrated over the last three reporting periods that it can sustain a high compliance level, which indicates that supervisors and deputies are being more attentive to this issue.

We also note sustained improvement in the issuance of Incidental Contact Receipts (ICRs) to passengers, although MCSO is not yet in Phase 2 compliance with this requirement. We encourage MCSO to continue to stress to the deputies the importance of properly providing the required documentation to the passengers in order to effectively comply with MCSO's policy. It is important that this documentation is provided to passengers prior to the conclusion of traffic stops. We still note that in some instances – either discovered by MCSO review or by our review – passengers are not being provided with ICRs during the stop. Although MCSO will normally mail ICRs to passengers in these instances, the practice does not comport with policy.

PSB investigations continue to be of high quality, though timelines continue to be problematic. While compliance for those investigations conducted outside PSB improved during this reporting period, MCSO has been unable to show sustained improvement in these investigations. PSB advised us that again this reporting period, new investigations were not assigned to Districts or Divisions outside of PSB. PSB is now handling 94% of all investigations. We reiterate our concerns from our last report about exacerbating an already overly burdensome workload for PSB investigators by continuing this practice.

The outside expert appointed by the Court to examine issues relevant to the deficiencies associated with administrative investigations completed and submitted his report to the Court during the last reporting period. During this reporting period, on August 23, 2022, the Court held a telephonic status conference to discuss the report. The Court-appointed expert, the Monitor, and one of the Deputy Monitors participated in that proceeding, along with the Parties. On November 8, 2022, outside of this reporting period, the Court issued the Third Supplemental Permanent Injunction/Judgment Order (Third Order). We will discuss that Order in further detail in our next quarterly status report.

During this reporting period, MCSO had some compliance setbacks with requirements that are related to timely supervisory reviews of documentation in the Patrol function. There are a number of newly promoted supervisors in Patrol, and we believe that as they become proficient with their job responsibilities, these deficiencies will decrease.

Regarding Employee Performance Appraisal (EPA)-related Paragraphs, we are optimistic that the revised EPA process will address the issues that we have been pointing out in past quarterly status reports and in quarterly site compliance reviews. Training on the new EPA process is under way. We understand that there will be a learning curve for supervisors once the new system is implemented. It may take some time for supervisors to adapt to the new process. We have discussed the areas of EPA underperformance previously with MCSO, and we believe that if supervisors follow the training and guidelines provided, the issues will be eventually resolved.

With regard to personnel resources, we receive recruitment and hiring information during our quarterly site visits. We continue to note a negative trend in personnel resources. Although we still have some concerns with MCSO's inability to reach full staffing, we understand the predicament local law enforcement agencies are in at the moment. The Detention Officer starting salary was increased, and current Detention employees also received pay increases. In addition, MCSO has some creative strategies in mind to recruit from the private sector. However, if these measures fail to attract the number of employees needed to safely operate the jails, we foresee a difficult road ahead for MCSO.

## Appendix: Acronyms

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The following is a listing of acronyms frequently used in our quarterly status reports:

|       |   |
|-------|---|
| AB    | Administrative Broadcast                    |
| ACJIS | Arizona Criminal Justice Information System |
| ACLU  | American Civil Liberties Union              |
| ACT   | Annual Combined Training                    |
| AIU   | Audits and Inspections Unit                 |
| AOC   | Arizona Office of Courts                    |
| ARG   | Alert Review Group                          |
| ARS   | Arizona Revised Statutes                    |
| ASU   | Arizona State University                    |
| ATU   | Anti-Trafficking Unit                       |
| BAF   | BIO Action Form                             |
| BB    | Briefing Board                              |
| BIO   | Bureau of Internal Oversight                |
| BWC   | Body-worn camera                            |
| CAB   | Community Advisory Board                    |
| CAD   | Computer Aided Dispatch                     |
| CBP   | Customs and Border Protection               |
| CDA   | Command Daily Assessment                    |
| CEU   | Criminal Employment Unit                    |
| CID   | Court Implementation Division               |
| COrD  | Community Outreach Division                 |
| CORT  | Court Order Required Training               |
| CRM   | Class Remedial Matter                       |
| DOJ   | Department of Justice                       |
| DSA   | Deputy Service Aide                         |
| DUI   | Driving Under the Influence                 |

|      |   |
|------|---|
| EETM | Effective Employee Performance Management |
| EIS  | Early Identification System               |
| EIU  | Early Intervention Unit                   |
| EPA  | Employee Performance Appraisal            |
| ESI  | Electronically stored information         |
| ETSI | Extended Traffic Stop Indicator           |
| FBI  | Federal Bureau of Investigation           |
| ESTI | Extended traffic stop indicator           |
| FEC  | Full and Effective Compliance             |
| FIDM | Fair and Impartial Decision Making        |
| FOF  | Findings of Fact                          |
| FTO  | Field Training Officer                    |
| GI   | General Instructor                        |
| ICE  | Immigration and Customs Enforcement       |
| IIU  | Internal Investigations Unit              |
| IMF  | Incident Memorialization Form             |
| IR   | Incident Report                           |
| JED  | Judicial Enforcement Division             |
| LNET | Long non-extended traffic stop            |
| LOS  | Length of stop                            |
| LLS  | Legal Liaison Section                     |
| MCAO | Maricopa County Attorney's Office         |
| MCSO | Maricopa County Sheriff's Office          |
| NETS | Non-extended traffic stops                |
| NOI  | Notice of Investigation                   |
| NTCF | Non-Traffic Contact Form                  |
| OA   | Open Axes                                 |
| OIT  | Officer in Training                       |
| PAL  | Patrol Activity Log                       |
| PDH  | Pre-Determination Hearing                 |

|       |  |
|-------|--|
| POST  | Peace Officers Standards and Training      |
| PPMU  | Posse Personnel Management Unit            |
| PSB   | Professional Standards Bureau              |
| SID   | Special Investigations Division            |
| SMS   | Skills Manager System                      |
| SPSS  | Statistical Package for the Social Science |
| SRT   | Special Response Team                      |
| TraCS | Traffic Stop Data Collection System        |
| TSAR  | Traffic Stop Annual Report                 |
| TSAU  | Traffic Stop Analysis Unit                 |
| TSMR  | Traffic Stop Monthly Report                |
| TSQR  | Traffic Stop Quarterly Report              |
| VSCF  | Vehicle Stop Contact Form                  |

**Comments on the Draft Thirty-Fourth Report of the Independent Monitor for the  
Maricopa County Sheriff's Office Provided by the Plaintiff Class  
February 14, 2023**

Pursuant to Paragraph 132 of the Court's First Supplemental Permanent Injunction/Judgment Order (First Order), Doc. 606, Plaintiffs' comments on the draft of the Thirty-Fourth Report of the Independent Monitor for the Maricopa County Sheriff's Office (34th Draft Report), which covers the third quarter of 2022, July 1-September 30, 2022.

**Section 1: Introduction**

Plaintiffs focus their comments on issues of Training (Section 6), Traffic Stop Documentation and Data Collection (Section 7), Supervision and Evaluation of Officer Performance (Section 9), Misconduct Investigations, Discipline, and Grievances (Section 12), Community Outreach and Community Advisory Board (Sections 11 and 13), and Complaints and Misconduct Investigations Relating to Members of the Plaintiff Class (Section 17). Plaintiffs continue to highlight concerns surrounding MCSO's ability or willingness to provide meaningful supervisory oversight to deputies in order to identify and curb deputy misconduct. Plaintiffs continue to see several instances of supervisors and instructors either not being observed as required or failing to meet standards when providing deputy-related evaluations. PSB investigators are failing to properly investigate racial bias claims and are instead over-working straightforward investigations that could have been dealt with in an efficient manner.

**Section 6: Training**

MCSO is not in compliance with Paragraph 42. The issue is that MCSO policy does not specify the frequency of instructor observations for the Employee Performance Appraisal (EPA) class or PSB8 Internal. The Monitor notes that MCSO policy directs only that observations are to be included in the Training Division, nothing more. (Draft Report at 44) While MCSO has apparently increased the frequency and use of the observations in this reporting period (*Id.*), Plaintiffs recommend additional policy directives to ensure the frequency of these observations.

As Plaintiffs have raised in prior quarters, the Independent Monitor for this reporting period did not indicate if any of the identified 3,173 individuals who require Order-related instructions started any such training or if MCSO failed to provide the required training in the previous reporting period. (Draft Report at 45) We continue to recommend including the dates of training in future reports since the Training calendar is available. Plaintiffs also recommend that MCSO directly provide the Training Calendar to the parties with notice of any changes and the number of individuals trained in each

category (sworn members, reserve members, retired reserve members, Posse members, Deputy Service Aides (DSAs), detention members, and civilian employees).

While MCSO is found to be in compliance with Paragraph 50, Plaintiffs are concerned that MCSO's failure to deliver the 20-hour Fourth and Fourteenth Amendment (Training on Detentions, Arrests, and the Enforcement of Immigration-Related Laws) classroom training during this reporting period is an oversight large enough to warrant a rejection of MCSO's assertion of Full and Effective Compliance with this Paragraph. Draft Report at 50. Plaintiffs believe that this finding should be modified to not in compliance. The Training on Bias-Free Policing/Training on Detentions, Arrests and the Enforcement of Immigration Laws was not offered during this reporting period. *Id.* Any new deputies, Posse members and DSAs would not have received the requisite training within the 90 days of the start of their service date. At minimum, a warning should be issued and if it is not offered in the next reporting period, the finding should be changed at that time.

### **Section 7: Traffic Stop Documentation and Data Collection**

Plaintiffs echo their comments previously made in the Thirty-Third Report and generally agree with the Monitoring Team's findings in Section 7. Plaintiffs continue to note the models used to test for bias as a part of the TSMR pilot are still under development. While much progress has been made towards implementing an objective model to track bias in traffic stops, the models employed still need significant testing to ensure their reliability and validity. Plaintiffs are particularly concerned by the separation of stops based on "Special Assignments", which could mask individualized assessments used to identify discriminatory biases. Plaintiffs also note the following regarding specific paragraphs MCSO must meet in order to achieve compliance with the Court's order:

Paragraph 54 – This paragraph is composed of several subparagraphs detailing information MCSO must collect during traffic stops. The information required to be collected includes basic information such as the "name...of each deputy" up to and including more detailed information like "the Deputy's perceived race, ethnicity and gender of the driver and any passengers based on the officer's subjective impression." This information not only creates a literal (and figurative) paper trail which can be qualitatively and quantitatively monitored for unconstitutional policing concerns, but also serves to provide further answers for why racially biased policing continues to occur at MCSO.

In regard to Paragraph 54.g, Plaintiffs agree with the monitoring team's determination MCSO is not in compliance. Plaintiffs note their concern MCSO is still failing to provide required documentation in the form of Incidental Contact Receipts ("ICRs") to passengers during stops (and failing to document all stops involving passengers). While Plaintiffs are encouraged to see the compliance rate improve, they re-

emphasize their concern from the Thirty-Third Report regarding discipline of deputies for a breach of MCSO policy regarding providing these forms during stops.

As to the to the other subparagraphs in this section, Plaintiffs are pleased to see improvement in compliance with basic elements of a traffic stop (as required by MCSO policy). Indeed, in past report deputies consistently failed to accurately note information in the Vehicle Stop Contact Forms (“VSCFs”) and sometimes forgot to put in information about passengers, the presence of additional deputies on scene, or whether a person was searched. As Plaintiffs have indicated previously, the VSCF system was created to routinize stops (and eliminate bias). It is essential MCSO deputies meet the basic recording requirements required by the VSCF to avoid undermining a foundational aspect of compliance designed to reduce pretextual stops.

Paragraph 70 – The Seventh Traffic Stop Annual Report (published by MCSO in June 2022) confirmed Plaintiffs’ suspicions that disparities still exist in MCSO’s stops which “may indicate a systemic bias within the patrol function” that targets the Latino community. Plaintiff agrees MCSO is not in full compliance with this section but believes MCSO has not adequately responded to the objective conclusion a “systemic bias” persists at the office. Indeed, during the last site visit, MCSO seemed to suggest such bias is universal across law enforcement agencies. Plaintiffs disagree the problem is universal, but rather continue to argue MCSO has failed to expedite training and community engagement which could ameliorate implicit bias within the office.

MCSO’s Constitutional Policing Plan – Plaintiffs continue to highlight the lack of responses to the Traffic Stop Survey as a continuing problem in in exploring qualitative explanations for stop disparities. Even with the implementation of a QR code, MCSO has only seen a response rate uptick of .08%. This is not statistically meaningful, and MCSO should continue to develop measures which will improve response rates.

## **Section 9: Supervision and Evaluation of Officer Performance**

MCSO is still out of compliance with Paragraph 87 and this is significant as this provision of the First Order requires MCSO to hold Commanders and Supervisors “directly accountable for the quality and effectiveness of their supervision, *including whether Commanders and Supervisors identify and effectively respond to misconduct*” which is critical to the success of achieving compliance and ultimately protecting the Plaintiff class from continued harm at the hands of a law enforcement agency that must prioritize and absorb meaningful accountability measures. ¶ 87 (emphasis added); Draft Report at 130-131. MCSO also remains out of compliance with Paragraph 92, primarily due to the ongoing issues with reviews of supervisors. Only 72.73% of the 22 Supervisor EPAs reviewed were in compliance. Draft Report at 138. MCSO is at risk of losing its compliance finding in Paragraph 94 due to Incident Memorialization Forms (IMFs) and

arrest cases reduction in overall reviews of arrest reports in a timely manner. Draft Report at 141-142.

It further continues to be of great concern to the Plaintiffs that MCSO is out of compliance with Paragraphs 95, 97, 98, 99 and 100. As it is still the case, supervisors, agency wide have not been able to demonstrate that they can produce consistent quality supervisory reviews of their deputies. Draft Report at 148-149. In this quarter there were 37 EPAs reviewed and were found to be at 83.78% compliance. Draft Report at 143.

The Monitor still must independently ensure that the EIS is being properly utilized by supervisors in their reviews of subordinates. The ongoing delay in implementing a database and EIS interferes with the goals of the Court Order to safeguard from practices resulting in discriminatory treatment or profiling. The report notes the “failure directly impacts quality of review, as required by Paragraph 100.” Draft Report at 148.

## **Section 12: Misconduct Investigations, Discipline, and Grievances**

Paragraph 173. Paragraph 173 provides that any employee who is named as a principal in an ongoing investigation of serious misconduct shall be presumptively ineligible for hire or promotion during the pending investigation. This paragraph requires the Sheriff and/or the Maricopa County Sheriff’s Office (MCSO) to provide a written justification for hiring or promoting an employee or applicant who is a principal in an ongoing investigation of serious misconduct. The Monitor found MCSO “in compliance” with this paragraph.

Despite the Monitor still not having reviewed employee files since January 2020, as required by Paragraph 173, it nonetheless found MCSO to be “in compliance.” (Draft Report at 170) As expressed in Plaintiff’s comments on the draft of the Thirty-Third Report, Plaintiff acknowledges the need to conduct remote site visits, but an alternate method for reviewing employee files remotely must be established to ensure compliance with Paragraph 173. If no alternate is available, Plaintiff requests that the Monitor’s finding be changed to “Deferred.” This finding is appropriate for circumstances in which the Monitor is unable to fully determine MCSO’s compliance status.

Plaintiff further notes concern that one Detention employee who was promoted to Captain had an open misconduct investigation. The Draft Report indicates an Executive Chief submitted a memorandum stating that the allegations were not of a serious nature and were not expected to be sustained. *Id.* at 171. The Monitor found the memorandum persuasive and noted no concerns with the employee’s promotion. This fails to satisfy the requirements of Paragraph 173. The Monitor must be able to review employees’ personnel files to make a determination as to MCSO’s compliance when making promotions. Until a procedure is in place to review such files, MCSO should not be in compliance with this

provision of the Court's Second Amended Second Supplemental Permanent Injunction. (Doc. 1765)

**Sections 11 and 13: Community Engagement/Community Outreach Program**

**A. Community Engagement**

**i. Community Outreach Program**

With regard to Paragraphs 109 through 114, the explanations in the 34th Draft Report are nearly identical to, if not the same as, the 32nd, 33rd Reports, which suggests no material changes from the last two reporting periods. *See* 33rd Monitor Report at 151-55. Under Paragraph 109 of the First Order, the Court directs the Monitor to “hold at least one public meeting per quarter to coincide with the quarterly site visits by the Monitor in a location convenient to the Plaintiffs class.” *Draft 34th Monitor Report* at 156. Plaintiffs believe that a “Deferred” status would have been appropriate given that the site visit took place remotely and the community meeting did not take place. Plaintiffs understand the Monitor’s concerns regarding travel due to the COVID-19 pandemic. Plaintiffs have expressed numerous times that a virtual community meeting is feasible. Plaintiffs urge the Monitor to hold a virtual meeting if an in-person one cannot be accommodated due to the ongoing public health crisis.

As with Paragraph 109, Plaintiffs request that Paragraphs 110-112 which pertain to the requirements of public meetings, be changed to “Deferred” status. The Monitor made “Not applicable” findings because the public meetings did not take place due to the ongoing public health crisis. Plaintiffs believe that a “Deferred” finding is appropriate because the Monitor was unable to determine compliance since a community meeting did not take place due to the ongoing pandemic. The Plaintiffs urge the Monitor to hold virtual community meetings if in-person meetings continue to be affected by COVID-19 public health concerns.

With regard to paragraph 114, while the Community Outreach Division (COrD) did not receive any complaints, concerns, or suggestions by members of the public regarding the implementation of the Court’s Orders for this reporting period, Plaintiffs urge the COrD to proactively conduct outreach activities in the impacted communities such as hosting virtual and in-person meetings *related to the Ortega Melendres* litigation. This way, MCSO can hear directly from community members on questions and concerns they may have.

**ii. Community Engagement/MCSO Community Liaison and Community Advisory Board (CAB)**

With regard to paragraph 261, the 32nd, 33rd, and 34th Draft Reports appear to have deleted the language in *italics* from the 28<sup>th</sup> Report without explanation: “CAB continues to explore the possibility of retaining a consultant to conduct a study to identify barriers to the filing of civilian complaints against MSCO personnel, *by researching polling firms that are experienced in working with Latino populations.*” *Id.* at 242, *See* 28th Monitor Report at 256. Plaintiffs recommend that the Report indicate whether the CAB continues to explore whether it will retain a polling firm with experience working with Latino communities.

With regard to Paragraph 262, the explanation in the 34<sup>th</sup> Draft Report is identical to the 32nd and 33rd reports, which suggests no material changes from the last three reports.

### **Section 17: Complaints and Misconduct Investigations Relating to Members of the Plaintiff Class**

Paragraph 281 requires MCSO to ensure that administrative misconduct investigations regarding Class Remedial Matters (CRMs) are consistent with (1) the requirements of the Court’s Orders, (2) MCSO’s policies, and (3) the manner in which MCSO handles all other complaints and disciplinary matters. During this reporting period, the Monitor reviewed four CRM cases completed by PSB. In all four cases, the Monitor concurred with the findings of the PSB Commander.

We note concerns from two of the investigations for this reporting period. The first case is an example of MCSO overworking an investigation that was straightforward but failing to adequately investigate a bias investigation where MCSO spent little to no time investigating the complainant’s allegations of racial discrimination. The second case demonstrates a problematic characterization of the Court’s Orders by the PSB investigator.

*Allegation of over-detention and racial discrimination against an inmate by a detention officer.* The allegation of this case was straightforward: whether MCSO detained the complainant for longer than allowed. Despite this straightforward allegation, the PSB investigative memo was 41 pages long.

In stark contrast, the PSB investigator spent almost no time actually investigating the racial discrimination claims. Despite PSB’s finding of “unfounded,” no evidence was cited by MCSO clearly disproving any allegation of bias as required by Paragraph of 281 of the Second Order.

In the second case, the complainant alleged that a deputy was racially biased towards her after a traffic accident. Plaintiffs note their concerns with this case to the Monitor because of troubling remarks the PSB investigator stated to the deputy during

the PSB interview. When the deputy expressed frustration with the complaint and the investigation, the investigator said that anyone can file a complaint for any reason and MCSO still has to investigate. The investigator said that their feelings do not matter and everything they do is based on court order. Comments such as this undermine MCSO's own internal investigations and raise serious concerns about whether MCSO would maintain constitutionally adequate accountability systems without judicial oversight.

**Maricopa County Sheriff's Office**  
**Comments on Monitor's Thirty-Fourth (34th) Quarterly Draft Report**  
**July 1, 2022 – September 30, 2022**

The Monitor's Thirty-Fourth (34th) Quarterly Draft Report covers the time from July 1, 2022 to September 30, 2022 (the "Draft Report"). MCSO continues to work with the Monitor, American Civil Liberties Union, and the Department of Justice to achieve compliance with the Court's Orders. Upon taking office in January 2017, Sheriff Penzone created the Compliance Bureau, which consolidated many divisions and units working to ensure MCSO was operating more efficiently and effectively to achieve compliance. MCSO is dedicated to following best police practices and gaining full and effective compliance with the Orders.

On January 11, 2023, MCSO submitted and filed with the Court a corrected 34th Quarterly Report, which delineates the steps that have been taken to implement the Court's Orders and the plans to correct problems and responses to concerns raised in the Monitor's previous Quarterly Report. (Doc. 2848.) MCSO requests that the content of its corrected 34th Quarterly Report be considered as comments to the Monitor's Draft Report as it contains relevant feedback. MCSO's additional comments to the Monitor's compliance findings are listed below.

**Section 4. Policies and Procedures**

**Paragraph 25.** MCSO recommends that the Monitor change the Phase 2 rating for Paragraph 25 from deferred to "in compliance." MCSO remains in deferred status because the Monitor has deferred its Phase 2 compliance assessment of Paragraph 25(e), which requires that MCSO policy "prohibit the use of particular tactics or procedures on a traffic stop based on race or ethnicity." The Monitor's review of CAD and body-worn camera recordings, however, "revealed that deputies were not making traffic stops using tactics based on race or ethnicity." This review and conclusion support finding MCSO in Phase 2 compliance with subparagraph (e).

The Monitor is deferring its determination of compliance with subparagraph (e) because the Monitor has not yet determined that MCSO is in compliance with Paragraph 67. Deferring on this basis is unnecessary for two reasons. First, as noted, the Monitor's independent review of CAD and body-worn camera recordings has confirmed compliance with this subparagraph. Second, the Monitor has found MCSO in compliance with all of Paragraph 67's subparagraphs, but the Monitor has declined to find MCSO in overall compliance until the TSMR is pilot completed. Paragraph 25(e), however, does not reference the TSMR. For these reasons, MCSO recommends finding MCSO in compliance with Paragraph 25.

## **Section 6. Training**

**Paragraph 42.** It is not clear from the text of Paragraph 42 why MCSO is not in compliance with this Paragraph. MCSO requests modification of the assessment of Paragraph 42 to explain why MCSO is not in compliance.

## **Section 7. Traffic Stop Documentation and Data Collection**

**Paragraph 69.** MCSO recommends that the information about the Threshold Analysis Review proposal be updated. The proposal was approved and MCSO provided a demonstration to the Monitoring Team and parties in the first quarter of 2022.

**Paragraph 70.** MCSO recommends that future reports clarify the standard for determining compliance with Paragraph 70. Paragraph 70 requires that MCSO “take reasonable steps to investigate and closely monitor the situation,” if a traffic stop analysis indicates that a deputy or unit may be engaging in “racial profiling, unlawful searches of seizures, or unlawful immigration enforcement, or that there may be systemic problems regarding any of the foregoing.” This language means MCSO’s compliance should be assessed based on follow up done when traffic studies identify problems that are described in Paragraph 70.

Completion of every aspect of the Constitutional Policing Plan (CPP), based on the percentage shown on the SmartSheet, should not be required for MCSO to be in compliance with Paragraph 70. In particular, Goal 9 addresses ongoing Human Resources issues that, although critically important to MCSO, should not implicate compliance with Paragraph 70. In addition, the Employee Performance Appraisal (EPA) process addressed in Goal 2 should not affect compliance with Paragraph 70 but should be assessed within other paragraphs that specifically assess the use of EPAs. Likewise, MCSO has been providing the trainings required by Goals 3, 4, and 5 consistently over the past several years. Although the percentage completion for those goals is tracked internally each calendar year, as is true of other training required by the Orders, MCSO is in compliance with Goals 3, 4, and 5 of the CPP based on its ongoing compliance with those training obligations.

Apart from clarifying the standard for compliance with Paragraph 70, MCSO recommends that Goal 6’s discussion of approval of the TSMR documents indicate that the guidance documents and training documentation were completed and approved in this quarter.

For Goal 9, MCSO recommends a wording change to the description of EyeDetect so it reads: “This instrument measures slight changes in eye movement to detect deception.”

## **Section 8. Early Identification System (“EIS”)**

**Paragraph 72.** MCSO recommends that the discussion of the Threshold Analysis Review process be updated to indicate that the process was approved, and MCSO provided a demonstration to the Monitoring Team and parties in the first quarter of 2022.

**Paragraph 79.** MCSO recommends that the discussion of the TSMR indicate that the guiding documents and training documentation were completed and approved in the third quarter.

**Paragraph 81.** MCSO recommends that the discussion of the Threshold Analysis Review process be updated to indicate that the process was approved, and MCSO provided a demonstration to the Monitoring Team and parties in the first quarter of 2022.

## **Section 9. Supervision and Evaluation of Officer Performance.**

**Paragraph 94.** As described in the comment on Paragraph 96, eight of eleven Incident Memorialization Forms (IMFs) reviewed were in compliance, not seven of eleven as the draft report indicates. That error should be corrected. Correcting the number of compliant IMFs will increase the compliance percentage for Paragraph 94 from 92.31% (120 out of 130) to 93.08% (121 out of 130).

**Paragraph 96.** The draft report’s summaries of the eleven IMFs reviewed this quarter indicate that eight of the eleven IMFs reviewed were in compliance, but the draft report says that only seven of the eleven were in compliance. The draft report should be corrected to state that eight of the eleven IMFs were in compliance. Correcting the number of compliant IMFs will increase the compliance percentage for this quarter from 63.64% to 72.73%.

**Paragraph 97.** MCSO recommends that the discussion of the TSMR indicate that the guiding documents and training documentation were completed and approved in the third quarter.

## **Section 12. Misconduct Investigations, Discipline, and Grievances.**

**Paragraph 179.** The Monitor’s draft report comments that, although the instructor who delivered the annual PSB8 Internal training was rated as above average in most categories, a significant number of test takers required test remediation. MCSO takes its training seriously, so it studied this issue carefully.

As an initial matter, although the Monitor notes 52 personnel attended this training, only 41 were investigators. Other PSB staff attended, but the target audience was the 41 investigators.

In reviewing feedback from the course, MCSO was able to identify that the issue leading to the relatively high rate of test remediation was with the test questions themselves, rather than the instructor. In addition to the member of MCSO Training that observed the class, many attendees had positive feedback about the instructor. The issue arose on the test, which attendees reported did not align well with the information presented, had questions that were worded in a confusing way, and used question formats that were both confusing and not in common use throughout MCSO.

**Paragraph 200.** As currently drafted, the Monitor’s comments on subparagraph (e) are internally inconsistent—they simultaneously claim that “there were investigations without attempts to conduct in-person interviews” and that the Monitor “did not identify any investigations where PSB did not make any attempts to conduct an in-person interview.” MCSO recommends that the comments to subparagraph (e) be revised as described below (language recommended for deletion is stricken and proposed new language is in bold):

Paragraph 200.e. requires that investigators make reasonable attempts to interview civilian complainants in person. During ~~this and~~ previous reporting periods, there have been numerous investigations in which investigators did not make attempts to interview complainants in person. The majority ~~were have been~~ consistently attributed to concerns related to COVID-19. ~~Again, this reporting period, there were investigations without attempts to conduct in person interviews due to COVID-19 restrictions in place.~~ **In this reporting period, we** ~~We~~ did not identify any investigations where PSB did not make any attempts to conduct an in-person interview; ~~and no explanation was provided for not doing so.~~ PSB discontinued the authorization to conduct telephone interviews based on COVID restrictions, effective May 1, 2022.

#### **Section 14. Supervision and Staffing.**

**Paragraphs 265 and 267.** Paragraphs 265 and 267 are, as the Monitor describes, a “general directive that covers several aspects of supervision.” Compliance with these Paragraphs is based on MCSO’s compliance with other Paragraphs of the Court’s Orders. MCSO has been in compliance with those Paragraphs, and, as a result, in compliance with Paragraphs 265 and 267 since the fourth quarter of 2021.

Even though MCSO remains in compliance with all of the Paragraphs relevant to compliance with Paragraphs 265 and 267, the draft report deems MCSO out of compliance with Paragraphs 265 and 267.

The Monitor's draft holds MCSO out of compliance with Paragraph 265 because it has issued compliance warnings for different Paragraphs relevant to Paragraph 265's assessment in this quarter and the previous quarter. In the previous quarter, the Monitor issued a compliance warning on Paragraph 85, but MCSO remains in Full and Effective Compliance with Paragraph 85 with a compliance rate of 99.1% this quarter. This quarter, the Monitor issued warnings regarding Paragraphs 83 (87.23% compliance rate) and 94 (corrected compliance rate of 93.08%), but MCSO remains in Full and Effective Compliance with Paragraph 83 and in compliance with Paragraph 94.

MCSO believes that because it remains in compliance with all Paragraphs underlying Paragraph 265, it should remain in compliance with Paragraph 265 this quarter. It should fall out of compliance only if the Monitor changes the compliance rating for one of the underlying Paragraphs after two consecutive quarters of non-compliance with that particular Paragraph. For the same reason, MCSO believes that it should remain in compliance with 267. MCSO has received warnings regarding two of the underlying Paragraphs this quarter and received a warning regarding Paragraph 85 the previous quarter, but it remains in compliance with all of the Paragraphs relevant to compliance with Paragraph 267.

## **Section 15. Document Preservation and Production.**

**Paragraph 269.** As MCSO has previously explained, MCSO's standard, manual document retention policy is sufficiently robust to ensure compliance with preservation requests. As the Monitor's draft quarterly report notes, LLS provided document retention notices to relevant custodians, which ensured that all relevant documents were preserved. MCSO's compliance with Paragraph 269, which is based on "document preservation notices to MCSO employees," should be assessed separately from 270, which implicates Open Axes and MCSO's search for a new vendor. Because timely document preservation notices are being provided, MCSO asserts that it remains in compliance with Paragraph 269 and requests that the Monitor modify its draft report accordingly.

Separately, the final sentence of the Monitor's comments on this Paragraph notes that LLS will keep the Monitor "apprised on a monthly basis of the status of the indexing," but this is more accurately described as the "rerunning of searches" rather than "indexing." MCSO recommends that the Monitor make that change, in addition to changing the compliance rating.

**Paragraph 270.** The Monitor's comments on this Paragraph describe Open Axes as searching through the "H, W, and U computer hard drives of MCSO," but it is more

accurate to say that Open Axes was searching through “MCSO’s OneDrive and on-premises storage array.” MCSO recommends that the Monitor make this change. The Monitor’s comments discuss a “quarterly request from the LLS Director for a certification that MCSO is sequestering the hard copies of documents . . . .,” but LLS is led by a Commander, not a Director (which the Monitor notes later in the same Paragraph). MCSO recommends changing the reference from “LLS Director” to “LLS Commander.”

**Comments on the Draft Thirty-Fourth Report of the Independent Monitor  
for the Maricopa County Sheriff's Office  
Provided by Plaintiff-Intervenor United States  
February 14, 2023**

Pursuant to Paragraph 132 of the Court's Supplemental Permanent Injunction (First Order) (Doc. 606), Plaintiff-Intervenor United States comments on the draft of the Thirty-Fourth Report of the Independent Monitor for the Maricopa County Sheriff's Office (Draft Report), which covers the third quarter of 2022.

**How to Read These Comments**

The United States is providing these comments pursuant to Paragraph 132 of the First Order, which states:

The Monitor shall provide a copy of quarterly reports to the Parties in draft form at least 21 business days prior to filing them with the Court to allow the Parties to provide written comment on the reports. The Monitor shall consider the Parties' responses and make any changes the Monitor deems appropriate before issuing the report. The Monitor shall attach to his or her report copies of any comments submitted by the Parties.

(First Order at 51-52.)

What may be somewhat confusing to members of the public is that when our comments prompt the Monitor to make changes or clarifications to a Draft Report, those changes are reflected in the final version that is made available to the public. But our comments, which are appended to that final version, actually refer to an earlier draft. Because of this discrepancy, our citations to page numbers may be wrong, and any specific language in the draft with which we take issue may differ from the final version.

**Section 1: Introduction**

We have no comments on this section.

**Section 2: Methodology and Compliance Summary**

We have no comments on this section.

**Section 3: Implementation Unit Creation and Documentation Requests**

We have no comments on this section.

**Section 4: Policies and Procedures**

Paragraphs 32 and 33. These paragraphs pertain to the reporting of policy violations and the timely, quality processing of internal affair investigations at the PSB (Professional Standards Bureau) and district levels. We agree with the Monitor's conclusion that MCSO is not in

compliance with these paragraphs based on its substantively inadequate and untimely processing of administrative misconduct investigations and substantive deficiencies. As the draft report indicates, MCSO still struggles with processing investigations in an efficient and adequate manner. Overall, the Monitor found that the District cases have improved from the last rating period (from 58% to 79% compliance). Draft Report at . 32-36. However, of the 26 total cases that the Monitor reviewed—both at the District and PSB levels—none of the District cases and six PSB cases (50%) met all the requirements for the completion of misconduct investigations. *Id.* at 35-36. Only seven cases (27%) were submitted within the 60- or 85-day timeframe (or included an acceptable justification for an extension). *Id.* . at 35. Three of the 14 District cases reviewed contained substantive deficiencies—aside from the typical timeliness issues. *Id.* at 33. The Monitor found that investigators arrived at inappropriate findings and that their investigations lacked thoroughness. *Id.* MCSO’s compliance with Paragraph 32 is 23 percent, an increase from 13 percent last quarter, but far below what is required by the Court’s orders. *Id.* at 36. MCSO should work to remediate the identified deficiencies and complete the investigations in a timely manner, as the Monitor has explained that “[g]eneral workload issues are insufficient justification” for prolonged investigation periods. *Id.* at 35.

### **Section 5: Pre-Planned Operations**

We have no comments on this section.

### **Section 6: Training**

We have no comments on this section.

### **Section 7: Traffic Stop Documentation and Data Collection and Review**

Throughout this section of the Draft Report, the Monitor has identified specific incidents in which it observed noncompliance with the Court’s orders and MCSO policy. The Monitor also acknowledges throughout this section the importance of strong supervisory review to correct and prevent such violations. All Parties have agreed with this observation. We therefore suggest that, in addition to reporting on specific non-compliant traffic stops, the Monitor also report whether the deficiencies it observed were also identified or corrected by MCSO prior to the Draft Report. This information would be useful to the Parties in evaluating supervision and accountability at MCSO.

Paragraph 54(g). We agree with the Monitor’s recommendation to hold Paragraph 54(g) out of compliance. This subparagraph requires deputies to document whether they make contact with any passengers during a traffic stop, the nature of the contact, and the reasons for the contact. Where a deputy asks any questions of a passenger beyond a greeting, including asking passengers to identify themselves, the Monitor determines whether the deputy memorialized the contact on a citation, warning, or, most typically, an Incidental Contact Receipt. MCSO remains out of compliance with this subparagraph due to inconsistent reporting. This quarter, in 11 of 68 stops that the Monitor reviewed to assess compliance with this subparagraph, deputies failed to adhere to policy requiring them to provide citations, warnings, or Incidental Contact Receipts to passengers with whom they made contact, thus failing to adequately document “the nature of the contact” and the reasons for it. Draft Report at 61. Deputies appear to be generating the forms

during the stops but failing to give them to the passengers. MCSO has stated that it will modify its electronic data collection system to prompt deputies to issue contact receipts, but it has not yet done so. *Id.* at 62. It is concerning that, more than seven years after MCSO implemented electronic field-based reporting, such rudimentary lapses in policy compliance still exist. These policy lapses also raise concerns about supervisory review. Under MCSO policy, supervisors must review and discuss all traffic stops conducted by deputies they supervise; such a requirement is intended to ensure supervisors can immediately recognize such deficiencies and act. MCSO should evaluate what remedial action could interrupt this pattern of noncompliance, and should also determine whether first-line supervisors are identifying these gaps in real time in the course of their supervisory duties.

Paragraph 54(i). We continue to believe that MCSO is not in full compliance with Paragraph 54(i), which requires MCSO to electronically collect during traffic stops the time the stop/detention was concluded either by citation, release, or transport of a person to jail or elsewhere or deputy's departure from the scene. Draft Report at 63. As we have explained in our comments to previous Monitor reports, rather than identifying a way to accurately collect this required information, MCSO has altered its vehicle stop contact form to allow deputies to identify certain stops that typically take longer, such as DUI investigations or those that require a tow truck. But in collecting stop data, MCSO does not require that deputies record when the person stopped is free to go and no longer "seized" for purposes of the Fourth Amendment. Rather, MCSO records the time a stop is "cleared" in the computer-aided dispatch system (CAD), which occurs when the deputy no longer has any responsibilities pertaining to that stop. While CAD clearance typically establishes when a deputy departed from the scene, it does not establish when "the stop/detention was concluded" for purposes of the injunction, leaving out critical information about MCSO's compliance with the injunction and the Fourth Amendment in an area where the Court previously found widespread constitutional violations. In addition, MCSO has not provided guidance to deputies on how to appropriately identify stops that were "extended," or conducted audits to ensure that this categorization is done consistently throughout the agency. The accuracy of data about the length of a stop is critical to ensuring that MCSO has a full picture of what its deputies are doing. The Monitor's assessment of this subparagraph does not address this gap in data collection.

Paragraph 54(k). This subparagraph requires MCSO to document whether any individual was asked to consent to a search (and the response), whether a probable cause search was performed on any individual, or whether a pat-and-frisk search was performed on any individual. Draft Report at 64. According to the Draft Report, identifying an appropriate sample of searches to measure compliance with this subparagraph has been difficult. MCSO itself has acknowledged that there may be more cases identified once deputies properly document searches. *Id.* During this reporting period, the Monitor assessed only 7 stops to determine whether deputies are correctly documenting searches. *Id.*

We continue to be concerned about the integrity of the data that MCSO collects regarding searches. In particular, we are concerned that deputies may have conducted a number of searches that they failed to document and that therefore did not receive the appropriate level of scrutiny from the agency or from the Monitor. The Monitor explains that part of the problem may be due to the manner in which MCSO collects data related to consent searches. Deputies must document all searches on the vehicle stop contact form, which is the primary source of data for statistical

analysis of agency-wide trends. But deputies are not required to record on this form when someone consents to a search, or that they notified the person searched of their right to refuse or revoke consent, other than by recording the encounter on their body-worn camera (BWC). Draft Report at 65. While a BWC recording may provide information related to whether consent was truly voluntary, this method of documentation alone does not lend itself to aggregation and statistical analysis of agency-wide trends. It also makes it difficult and time consuming for MCSO or the Monitor to audit whether consent searches were truly consensual. MCSO should take measures to ensure that information is collected and aggregated for analysis, and that deputies understand their obligations under policy. The Monitor has continuously advised MCSO to revisit the requirements of this section and to require deputies to obtain adequate consent by reading the Consent to Search Form and requiring the signature of everyone to be searched, but MCSO has failed to do so. *Id.* For that reason, DOJ recommends that MCSO be held out of compliance with this paragraph.

Paragraph 56. We disagree with the Monitor's assessment that MCSO is in compliance with this paragraph, which requires that the traffic stop data collection system be subjected to regular audits and quality-control checks and that MCSO develop a protocol for maintaining the integrity and accuracy of the traffic stop data. Draft Report at 67-68. As the Monitor states, it has been unable to observe that paper copies of forms used when TraCS is down are properly stored. *Id.* at 68. So the Monitor should change this compliance finding to "deferred," until the Monitor can verify compliance. We also continue to believe that, as part of this auditing and quality-control protocol, MCSO should calculate error rates when audits uncover problems in the data and then use those error rates to assess whether problems are serious enough to warrant changes to policy or procedure.

Paragraph 65. This paragraph requires MCSO to analyze traffic stop data on a monthly, quarterly, and annual basis. Draft Report at 76-78. MCSO must report its findings to the Monitor and the Parties and analyze the data to identify individual-level, unit-level, or systemic problems. We agree that MCSO is not in compliance with this paragraph, not only because MCSO has yet to finalize a protocol for Traffic Stop Monthly Reports (TSMR), but also because MCSO used or proposes to use an improper methodology in its Traffic Stop Quarterly Reports. As we explained in letters to MCSO and the Monitor last year, MCSO's sixth Traffic Stop Quarterly Report (TSQR 6. ) consistently understated disparities in how MCSO deputies treat white and Latinx drivers. as a result of data errors and methodological flaws, and MCSO's seventh Traffic Stop Quarterly Report (TSQR 7) proposed two additional analyses that include similar methodological flaws, including the fundamental statistical error of controlling for an outcome. In MCSO's most recent quarterly analysis (TSQR 9), which examined special assignments, MCSO improperly deviated from the Monitor-approved methodology by using aggregate data to draw an inference about individual deputies. As we explained in a February 6, 2023 email to MCSO and the Monitor about TSQR 9, MCSO compared aggregate data to infer incorrectly that individual deputy bias likely did not contribute to racial disparities in traffic stop outcomes.

Paragraph 70. This paragraph requires MCSO to take reasonable steps to investigate and closely monitor the situation if any of its analyses of traffic stop data indicates that a particular deputy or unit may be engaging in racial profiling, unlawful searches or seizures, or unlawful immigration enforcement, or that there may be systemic problems regarding any of the foregoing. Where MCSO or the Monitor concludes that systemic problems of racial profiling, unlawful searches or

seizures, or unlawful immigration enforcement exist, this paragraph also requires MCSO to take appropriate steps at the agency level, in addition to initiating corrective and/or disciplinary measures against the appropriate Supervisor(s) or Command Staff.

MCSO is not currently in compliance with Paragraph 70 and, according to the Monitor's reports, MCSO has not once demonstrated compliance with this requirement over nine years of monitoring. Draft Report at 86. MCSO's annual analysis of traffic stop data has consistently reported disparate outcomes on the basis of race and ethnicity, including the latest Traffic Stop Annual Report. *See* Doc. 2784-1 at 9. And MCSO's most recent Traffic Stop Quarterly Report (TSQR 8) shows that MCSO has not meaningfully reduced racial disparities in traffic stops from 2017 to 2021. Draft Report at 77. MCSO acknowledges in TSQR 8 that the continued disparities were "not wholly unexpected." *See* TSQR 8 at 62 (Sept. 2022), *available at* [https://www.mcsobio.org/\\_files/ugd/c866a6\\_630b2867983c4a18bf48dc0c63182dde.pdf](https://www.mcsobio.org/_files/ugd/c866a6_630b2867983c4a18bf48dc0c63182dde.pdf).

The United States has repeatedly raised concerns that MCSO is not taking sufficient steps at the agency level to address persistent racial disparities in traffic stops. *See, e.g.*, Doc. 2802.3 at 5-6 (urging MCSO to "determine whether additional policy changes related to traffic stops could address the racial and ethnic disparities"); Doc. 2780.3 at 6 (same); Doc. 2757.3 at 6 (same). Recent developments have only heightened those concerns. For example, as the Monitor notes, MCSO's fifth Traffic Stop Quarterly Report (TSQR 5) found that certain Districts had larger racial disparities in traffic stops. Draft Report at 87. In the 16 months since MCSO released that report, MCSO's only response has been to hold meetings at each District to discuss the report's findings. MCSO has not implemented any other interventions suggested by Paragraph 70 to address the Districts with the largest disparities.

MCSO plans to finalize a protocol for Traffic Stop Monthly Reports (TSMR) to analyze the activities of individual deputies with unusually large racial disparities in enforcement, as compared to their peers. After significant delays in establishing a sound methodology to flag deputies for intervention, we look forward to evaluating whether the MCSO implements the analysis to identify appropriate interventions that reduce racially disparate enforcement by individual deputies. But by design, the TSMR is calculated only to address the behavior of individual deputies with extreme enforcement patterns. It is not designed to more broadly address the systemic disparities that MCSO's own data have shown for years. And when data show "systemic problems of racial profiling," MCSO must "take appropriate steps at the agency level." First Order at ¶ 70. Given MCSO's long history of discriminatory traffic enforcement, MCSO's leaders must implement broader measures to modify behavior "at the agency level" to achieve compliance with Paragraph 70.

In the past, MCSO has recognized this obligation. Four years ago, MCSO presented a "Plan to Promote Constitutional Policing" and committed to additional initiatives—beyond those already required by the Court's orders—to address and reduce the disparities it found in its annual analysis at that time. Draft Report at 91. The Monitor relies on MCSO's representations during site visits and conference calls to ascertain whether MCSO is making reasonable progress to implement the Plan. The Plan has nine goals and is intended to cover a variety of MCSO activities, including improving supervisory practices, enhancing data collection, delivering additional targeted training, and expanding recruitment efforts. *See* Draft Report at 91-95. The Constitutional Policing Plan reflects MCSO's obligation to take steps to monitor and respond to

signs that biased policing may be occurring, and to take steps to “modify activity.” Yet MCSO’s own reporting suggests that it has not prioritized the implementation of this plan. For example, one of the Plan’s goals is to improve traffic stop data collection and analysis, and MCSO reports that it had completed 98% of the goal’s tasks. Draft Report at 93. This level of completion appears to be inconsistent with MCSO’s actual progress, however. As explained above, MCSO has yet to finalize the protocol for the Traffic Stop Monthly Report (TSMR) process, a project that has taken years. These developments, along with MCSO’s history, suggest that significant work remains to improve traffic stop data collection and analysis, as contemplated by the Paragraph 70 plan.

The Parties and the Court have repeatedly reminded MCSO about its obligations under Paragraph 70. Indeed, three years ago, Judge Snow specifically addressed the requirements of Paragraph 70: “That is your obligation. There is no doubt that the TSAR [Traffic Stop Annual Report] says there may be systemic bias. So what are you going to do by way of reasonable investigation and close monitoring, in light of the TSAR’s report?” Doc. 2504 (Nov. 26, 2019 Status Conference) at 17. To address the Court’s concerns, MCSO should expand its analysis of traffic stop data to determine whether additional policy changes related to traffic stops could address the racial and ethnic disparities, including changes in deployment and enforcement priorities. MCSO has indicated an interest to pursue this analysis as part its Plan to Promote Constitutional Policing. But we have seen little progress, and, as described above, little evidence of agency-wide steps to reduce racial disparities in traffic enforcement. We urge MCSO and the Monitor to prioritize this issue.

Paragraph 83. This paragraph requires that MCSO supervisors “provide the effective supervision necessary to direct and guide Deputies,” including by responding to misconduct complaints; ensuring that deputies engage the community and increase public trust and safety; and providing counseling, redirection, and support to deputies as needed. MCSO must hold supervisors accountable for performing each of these duties.

We disagree that MCSO is in compliance with this paragraph, as we explained in our November 2022 objection to the Monitor’s finding. First, a finding of compliance is premature because the Monitor has not yet evaluated MCSO’s implementation of the Traffic Stop Monthly Report (TSMR) program for compliance with the Court’s orders. The TSMR program is intended to identify and intervene with individual deputies who have unusually large racial disparities in enforcement, as compared to their peers. Because the TSMR process will require MCSO to demonstrate effective supervision through meaningful interventions that address individual patterns of disparate traffic enforcement, the Monitor’s finding for Paragraph 83 should be changed to “deferred.”

Even apart from the TSMR, a finding of full and effective compliance is not consistent with the Monitor’s findings on other supervision-related paragraphs of Court’s Orders. For example, Paragraph 87 requires that MCSO hold commanders and supervisors directly accountable for the quality and effectiveness of their supervision. In its latest draft report, the Monitor found that MCSO is not in compliance with this paragraph. Draft Report at 130-31. Similarly, the Monitor

determined that MCSO is not in compliance with Paragraphs 95, 97, 98, 99, and 100. Draft Report at 142-150. These paragraphs relate to core aspects of effective supervision, such as identifying misconduct, taking corrective action, evaluating the effectiveness of interventions, and regularly reviewing deputies' performance for patterns of behavior. Because MCSO is not in compliance with these paragraphs, the Monitor should not find MCSO in full and effective compliance with Paragraph 83, which requires "effective supervision."

In fact, as the Monitor explains in the Report, there are already signs that MCSO should not maintain its compliance status for this paragraph. The Monitor found that MCSO failed to ensure "timely supervisor reviews" of Non-Traffic Contact Forms, which are "used by deputies to document people contacts and field interviews." Draft Report at 127. The Monitor further explained that "[t]imely supervisor reviews of documentation associated with field interviews are one of the primary requirements of this Paragraph." *Id.*

### **Section 8: Early Identification System (EIS)**

We have no comments on this section.

### **Section 9: Supervision and Evaluations of Officer Performance**

Paragraph 95. This paragraph relates to supervisor reviews of deputies' violations or deficiencies in arrests. It requires MCSO supervisors to accurately document issues and take corrective action.

We agree with the Monitor's determination that MCSO is not compliant with this paragraph. Draft Report at 142-43. The Monitor again found issues with the quality of supervisor Employee Performance Appraisals in EIS reviews pertaining to arrests; these were not sufficiently documented and therefore did not comply with this paragraph. *Id.* MCSO supervisors should ensure that their EIS reviews are sufficiently documented, especially as they relate to misconduct investigations, deficiencies in arrests, and any corrective actions taken.

Paragraph 97. This paragraph requires MCSO commanders and supervisors to periodically review EIS reports and information, and initiate or assess the effectiveness of, interventions for individual deputies, pursuant to the obligations set forth in Paragraphs 81(c)-(h).

We agree that MCSO is not in compliance with this paragraph, and that, as the Monitor notes, "[t]he reviews of broader pattern-based reports, as required by Paragraph 81.c., and assessments of interventions as required by this Paragraph, have not been sufficiently documented" to achieve compliance. Draft Report at 147. Under Paragraph 81(c), MCSO commanders and supervisors must review, on a regular basis but not less than bimonthly, EIS reports regarding their subordinates and, at least quarterly, broader pattern-based reports. Our review of supervisory notes, along with past on-site observations of supervisors' use of the EIS, does not persuade us that the bimonthly reviews of EIS information have been meaningful, or that supervisors are equipped to review broader pattern-based reports. We have yet to see evidence that supervisors properly prepare for or conduct appropriate interventions with deputies identified for

intervention through the EIS, and MCSO continues to struggle in providing the appropriate documentation to assist in those reviews.

Paragraphs 99-100: These paragraphs relate to supervisor evaluations of deputies' performance, including the consideration of misconduct complaints and investigations. Paragraph 99 requires that supervisory review "shall take into consideration all past Complaint investigations," as well as "citizen Complaints" and "past Supervisory actions taken pursuant to the early warning protocol." Paragraph 100 provides that "[t]he quality of Supervisory reviews shall be taken into account in the Supervisor's own performance evaluations."

We agree that MCSO is not in compliance with these paragraphs. As the Monitor notes, several Employee Performance Appraisals failed to document misconduct investigations, and 6 of the 22 supervisor Employee Performance Appraisals reviewed by the Monitor "failed to specifically and sufficiently document" supervisors' review of violations and corrective actions in EIS. Draft Report at 149-50. The failure to document misconduct investigations and supervisory review violates Paragraphs 99 and 100. In addition, Paragraph 99 requires that supervisors must "take into consideration" complaints and investigations, and Paragraph 100 instructs that MCSO must consider the "quality" of supervisory reviews in evaluating supervisors. Compliance requires not only proper documentation but also meaningful consideration of complaints, misconduct investigations, and other relevant factors by MCSO supervisors.

#### **Section 10: Misconduct and Complaints**

We have no comments on this section.

#### **Section 11: Community Engagement**

Paragraph 109. Paragraph 109 requires the Monitor to hold at least one public meeting per quarter, to coincide with quarterly site visits, and to consult with the Community Advisory Board and Plaintiffs' representatives on the location and content of the meetings. The Monitor finds itself in compliance with this paragraph. Draft Report at 156.

The Monitor reports that he did not travel to Maricopa County this quarter due to the COVID-19 pandemic, and therefore did not hold a community meeting this quarter. *Id.* We recommend changing the status of this requirement to "Deferred" because it was not possible to safely convene an in-person community meeting this quarter and the Monitor was unable to hold a virtual meeting as an alternative because of technological and language limitations. A finding of "Deferred" is appropriate for "circumstances in which [the Monitor is] unable to fully determine the compliance status – due to a lack of data or information, incomplete data, or other reasons that we explain in the narrative of our report." Draft Report at 4.

Paragraphs 110-112. These paragraphs describe further requirements for public meetings. The Monitor found that compliance with these paragraphs to be "Not applicable," because the COVID-19 pandemic prevented the Monitor from convening a community meeting. Draft Report at 156-58. We recommend that these findings to be changed to "Deferred." A finding of "Deferred" is appropriate for "circumstances in which [the Monitor is] unable to fully determine the compliance status – due to a lack of data or information, incomplete data, or other reasons that we explain in the narrative of our report." Draft Report at 4.

Paragraph 113. This paragraph requires MCSO to hire a Community Liaison who is fluent in English and Spanish. MCSO asserted compliance with this paragraph, and the Monitor concurred. Draft Report at 150. The Monitor reports that at least two of its Community Liaisons are fluent in English and Spanish. For the community to benefit from MCSO having a bilingual Community Liaison, it should be clear which of the liaisons have that language ability. The Monitor should direct MCSO to make clear on its website the language abilities of its liaisons. *See also* About Community Outreach, Maricopa County Sheriff’s Office, available at <https://www.mcso.org/community-outreach/about-community-outreach>.

” . . . ”

Paragraph 115. This paragraph governs MCSO’s interactions with Community Advisory Board (CAB), requiring MCSO to use the CAB as a conduit for dialogue between MCSO and the community and seek its recommendations on relevant materials, documents, and trainings. CAB members have frequently expressed that MCSO is often patronizing and condescending, often attempting to delegitimize its contributions in this case because the group does not have regularly publicized meetings, bylaws, or what MCSO’s counsel describes as “work product.” The Order in this case does not impose such requirements on the CAB, and the CAB is led by volunteers, so MCSO should take the initiative to consider the CAB’s recommendations. Moreover, Plaintiffs and the United States have consistently raised concerns about MCSO excluding the CAB in the development of curricula and other materials, notably the Enhanced Implicit Bias curriculum and the History of Discrimination Video. Both projects provided an opportunity from which to gain first-hand information about the affected communities in this case and to lift up those voices, but MCSO did not avail itself of the CAB’s expertise. Although the Monitor has reported that MCSO’s responsiveness to the CAB meets the requirements of the Order, the CAB still reports communication issues. Most recently, the CAB expressed concerns that MCSO had not informed them that the Office hired a vendor to conduct a staffing study, even though the Third Order required the study to account for how MCSO should allocate its personnel based, in part, “on the requirements and expectations of its served communities.” *See* Doc. 2830 (Third Order) at ¶ 361(1). MCSO must “facilitate regular dialogue” with the CAB, particularly about issues central to the *Melendres* case. *Id.* at ¶ 115. DOJ therefore believes that it is premature to find MCSO in compliance with this paragraph.

## **Section 12: Misconduct Investigations, Discipline, and Grievances**

Paragraph 173. This paragraph requires MCSO to consider employees’ and applicants’ disciplinary histories and involvement in ongoing investigations when making hiring, promotion, and transfer decisions. The Monitor found MCSO “in compliance” with this paragraph.

Because the COVID-19 pandemic prevented the Monitor from travelling to Maricopa County this quarter, the Monitor was unable to review personnel files to verify the information MCSO provided to demonstrate its compliance with these paragraphs. Draft Report at 171. The Monitor nonetheless found MCSO to be “in compliance.” If the Monitor cannot find a way to verify MCSO’s representations regarding its compliance with this paragraph without traveling to Maricopa County, we recommend that this finding be changed to “Deferred.” A finding of “Deferred” is appropriate for “circumstances in which [the Monitor is] unable to fully determine

the compliance status – due to a lack of data or information, incomplete data, or other reasons that we explain in the narrative of our report.” Draft Report at 4.

Paragraph 176. This paragraph requires MCSO to take the quality of investigators’ internal affairs investigations and supervisors’ reviews of those investigations into account in their performance evaluations.

To assess MCSO’s compliance with these requirements, the Monitor reviewed Employee Performance Appraisals (EPAs) for 22 supervisors and commanders. Draft Report at 173. In its review, the Monitor evaluates only whether the EPAs contain comments on the quality of the employee’s internal investigations or of the employee’s reviews of internal investigations. *Id.*

This review is incomplete. Rather than only assessing whether the EPAs contain comments on the required subjects—quality of investigations or reviews of investigations—the Monitor should also assess whether comments in EPAs affect the performance ratings of those employees. By limiting its assessment to whether comments are present, the Monitor’s review does not fully evaluate whether the quality of investigations/review of investigations actually affects an employee’s performance evaluation. In order to determine whether MCSO is complying with this paragraph, the Monitor must evaluate whether there is a connection between the quality of employees’ investigations/reviews and their performance evaluations. The Monitor found MCSO in compliance with this paragraph. *Id.* The Monitor should change its finding to “Deferred” until the Monitor conducts an appropriate review.

Paragraph 178. This paragraph requires MCSO to provide all supervisors and all personnel assigned to PSB with “40 hours of comprehensive training on conducting employee misconduct investigations.”

The Monitor finds MCSO in “full and effective compliance” with this requirement. Draft Report at 174.

However, the Monitor has recommended that MCSO revise this training to focus on specific requirements of Paragraph 178—properly weighing the credibility of civilian witnesses against employees, using objective evidence to resolve inconsistent statements, and the proper application of the appropriate standard of proof. *See* Independent Monitor’s 31<sup>st</sup> Quarterly Report (31<sup>st</sup> Report) (Doc. 2780) at 167. The Monitor has also recommended that the revised training (1) address the requirements of Paragraph 206 (f) and (g) (providing explicit and precise findings detailing credibility assessments), (2) review the standard of proof for substantiating an allegation, and (3) cover case law that is relevant to PSB investigations. *Id.* The Monitor’s recommendations correspond to deficiencies the Monitor identified in PSB’s investigations. *Id.* at 247-48.

The Monitor should not find MCSO in full and effective compliance with Paragraph 178 until the agency has established that it can update this training regularly, as required by Paragraph 47 (“MCSO shall regularly update the Training to keep up with developments in the law and to take into account feedback from the Monitor, the Court, Plaintiffs and MCSO Personnel.”). The Monitor should also require MCSO to refine its trainings to address deficiencies with its

investigations, as recommended by the Monitor. If MCSO does not regularly update this training to address what it learns about how investigators need to improve, the training will not serve its purpose.

In addition, the Court has indicated in its remedial order finding MCSO in contempt that PSB staff may require additional training on conducting misconduct investigations. *See* Doc. 2830 (Third Order) at ¶ 350 (“The Monitor will assess MCSO’s compliance with the investigative requirements of this order and shall determine whether training on investigative planning and supervision is needed and implement such training.”). The Monitor’s finding that MCSO is already in full and effective compliance with the requirement to provide training on investigations is therefore premature.

The United States continues to object to the Monitor’s determination that MCSO is in full and effective compliance with this paragraph. The Monitor should change its finding to “Deferred” because MCSO did not demonstrate compliance with this paragraph during this review period.

Paragraph 179. This paragraph requires supervisors and PSB personnel to receive eight hours of in-service training each year.

The Monitor finds MCSO in “full and effective compliance” with this requirement. Draft Report at 168. However, the Monitor has recommended that MCSO revise this training to focus on specific requirements of Paragraph 179—properly weighing the credibility of civilian witnesses against employees, using objective evidence to resolve inconsistent statements, and the proper application of the appropriate standard of proof. 31<sup>st</sup> Report at 167. The Monitor also recommended that the revised training (1) address the requirements of Paragraph 206 (f) and (g) (providing explicit and precise findings detailing credibility assessments), (2) review the standard of proof for substantiating an allegation, and (3) cover case law that is relevant to PSB investigations. *Id.* The Monitor’s recommendations correspond to deficiencies the Monitor identified in PSB’s investigations. *Id.* at 247-48.

PSB’s first draft of 2022 training materials required by Paragraph 179 establishes that the Monitor should not find MCSO in full and effective compliance with this paragraph. The draft materials fall short of the Court’s requirement that all MCSO training “aspire[] towards industry best practices and include[] adult-learning methods that incorporate realistic role-playing scenarios [and] interactive exercises...” First Order, ¶ 1(nn). Instead, the draft training consisted of almost 200 text-heavy slides presented over a 5.5-hour period, with one hour-long learning activity. The content included serious problems, including quoting (without attribution) from an FBI bulletin about the Reid interrogation method, while omitting cautionary information in the bulletin about flaws with this method.

. MCSO is not in full and effective compliance with this paragraph. MCSO should demonstrate that it is capable of developing a training in the first instance that meets the standards that the Court expects, including using adult learning techniques and interactive exercises. *See* First Order, ¶¶ 1(nn), 45. A finding of full and effective compliance indicates that MCSO is able to comply with the requirements of this paragraph without the supervision or intervention of the

Monitor, Plaintiffs, or the United States. The draft training that MCSO submitted in the previous quarter establishes that MCSO is not able to meet this standard.

The United States continues to object to the Monitor's determination that MCSO is in full and effective compliance with this paragraph. The Monitor should change its finding to "Deferred," because MCSO did not demonstrate compliance with this paragraph during this review period.

Paragraphs 187 and 236. These paragraphs require MCSO to maintain complete files relating to investigations and related proceedings.

Due to the COVID-19 pandemic, the Monitor has not reviewed files to assess MCSO's compliance with these paragraphs since 2019. Draft Report at 180, 224. The Monitor nonetheless found MCSO to be "full and effective compliance" with both paragraphs. *Id.* at 179, 225. If the Monitor cannot find a way to verify MCSO's representations regarding its compliance with this paragraph without traveling to Maricopa County, we recommend that this finding be changed to "Deferred." A finding of "Deferred" is appropriate for "circumstances in which [the Monitor is] unable to fully determine the compliance status – due to a lack of data or information, incomplete data, or other reasons that we explain in the narrative of our report." Draft Report at 4.

Paragraph 192. This paragraph requires the PSB to review, at least semi-annually, all investigations assigned outside PSB to determine, among other things, whether the investigation has been properly categorized, whether the investigation is being properly conducted, and whether the investigator reached appropriate findings.

The United States objects to the Monitor's determination that MCSO is in full and effective compliance with this paragraph. Draft Report at 183. MCSO's assertion is premature, in light of the significant changes the Court has ordered in the Third Order regarding how MCSO classifies complaints of misconduct. The Monitor's finding for this paragraph should be changed to "Deferred," as MCSO will need to establish a pattern of sustained compliance with the Court's latest remedial order. If the Court broadens MCSO's discretion to divert certain categories of complaints from PSB, *see* Third Order at ¶ 353, MCSO will have to establish that it is using this expanded discretion appropriately. To comply with this paragraph under the new paradigm, PSB will need to establish that it is capable of accurately assessing how complaints should be categorized, and whether entities outside PSB are handling complaints diverted from PSB appropriately.

Paragraph 200 and Paragraph 206. These paragraphs set forth extensive substantive requirements for how investigators should conduct investigations (Paragraph 200) and write investigation reports (Paragraph 206).

The United States objects to the Monitor's findings that MCSO is in full and effective compliance with these paragraphs. Draft Report at 196 and 201. These findings are premature, given that the Court has ordered significant changes to MCSO's investigative processes. The Monitor's findings for these paragraphs should be changed to "Deferred," as MCSO will need to establish a pattern of sustained compliance with the latest remedial order. In particular, the Monitor must newly evaluate PSB's current investigative practices to determine ways to improve

efficiency. Third Order at ¶ 348. And the Court has required MCSO to develop investigative plans for each investigation, and to eliminate any unnecessary investigative steps. *Id.* Under this new regime, PSB will need to establish that it is capable of meeting the requirements of Paragraphs 200 and 206 and of making reasonable decisions about which investigative steps to pursue.

Paragraph 202. This paragraph requires internal affairs investigators to investigate any evidence of potential misconduct uncovered during the course of the investigation, regardless of whether the potential misconduct was part of the original allegation.

The United States objects to the Monitor's finding that MCSO is in full and effective compliance with this paragraph. Draft Report at 198. MCSO's assertion is premature, given that the Court has made significant changes in MCSO's investigative processes. If the Court expands MCSO's discretion to divert complaints from PSB, *see* Third Order at ¶ 353, MCSO will need to establish that when complaints are initially handled outside PSB, investigators are able to identify potential misconduct they encounter during the course of an investigation, and that, when that occurs, they refer the matter back to PSB for reclassification. The Monitor's finding for this paragraph should be changed to "Deferred," as MCSO will need to establish a pattern of sustained compliance under the Court's remedial order.

Paragraph 212. This paragraph provides that investigators who conduct deficient misconduct investigations shall receive "the appropriate corrective and/or disciplinary action," and that failure to improve "after corrective and/or disciplinary action is taken shall be grounds for demotion and/or removal from a supervisory position" or PSB.

To comply with these requirements, MCSO submits a monthly update to show actions it has taken to address deficient investigations. The Monitor notes that during this reporting period, PSB identified and documented some deficiencies with investigations. Draft Report at 208. However, District supervisors documented deficiencies with only three investigations completed by District personnel, even though the Monitor found five of sixteen investigations to be non-compliant. Draft Report at 206. This was the fourth consecutive quarter in which the Monitor found that District supervisors have failed to document all deficiencies with District investigations. *See* 33<sup>rd</sup> Report at 203; 32<sup>nd</sup> Report at 201; 31<sup>st</sup> Report at 198. The Monitor nonetheless continues to find MCSO in compliance with this paragraph. MCSO is not meeting the requirements of this paragraph if supervisors are not documenting all deficient investigations and taking steps to address those deficiencies with their subordinates. The Monitor should change its finding to "not compliant."

Paragraph 218. This paragraph requires MCSO to maintain all completed administrative investigative reports and files, as required by applicable law.

Before the COVID-19 pandemic, the Monitor assessed MCSO's compliance with this paragraph by inspecting MCSO's criminal and administrative investigation file rooms and randomly reviewing internal affairs case files to verify that all information is also being electronically maintained in MCSO's electronic case file system. Draft Report at 212. Due to the pandemic, the Monitor has not completed this audit since October 2019. *Id.* The Monitor nonetheless found MCSO to be in full and effective compliance with this paragraph. *Id.* We recommend that this

finding be changed to “Deferred.” A finding of “Deferred” is appropriate for “circumstances in which [the Monitor is] unable to fully determine the compliance status – due to a lack of data or information, incomplete data, or other reasons that we explain in the narrative of our report.” Draft Report at 4.

Paragraphs 239-242. These paragraphs require MCSO to make its complaint process accessible through measures such as posting informational placards, requiring deputies to carry complaint forms, ensuring that the office that receives complaints is accessible to the public, and requiring complaint forms to be available at locations around the county.

Due to the COVID-19 pandemic, the Monitor has not traveled to Maricopa County this reporting period and has therefore not verified the information MCSO has provided about its compliance with these paragraphs. Draft Report at 226-276. The Monitor nonetheless found MCSO to be in compliance or in full and effective compliance with each of these paragraphs. *Id.* We recommend that these findings be changed to “Deferred.” A finding of “Deferred” is appropriate for “circumstances in which [the Monitor is] unable to fully determine the compliance status – due to a lack of data or information, incomplete data, or other reasons that we explain in the narrative of our report.” Draft Report at 4.

Paragraph 250. This Paragraph requires PSB to “conduct regular assessments of the types of complaints being received to identify and assess problematic patterns and trends.”

To comply with this requirement, MCSO submits quarterly summaries to the Monitor. In the summaries, MCSO lists (1) the divisions that received that most complaints and (2) patterns and trends of complaints received within each MCSO division. The summaries then list the most common categories of complaints. The summaries conclude with lists of employees who were named as principals in multiple complaints during the quarter. MCSO includes the same information in its semi-annual reports on PSB.

The United States objects to the Monitor’s finding that MCSO is in “full and effective” compliance with this paragraph. Draft Report at 233. PSB’s quarterly summaries and semi-annual reports do not achieve the core purpose of Paragraph 250. In these reports, PSB merely lists and categorizes the types of complaints it receives. Paragraph 250 requires PSB to take the additional steps of identifying and assessing patterns and trends. Without this analysis, PSB is failing to use its data to take actions calculated to prevent misconduct from occurring.

To illustrate: Seven of the eight quarterly reports PSB completed in 2020 and 2021 noted that the most common type of allegation was “‘rude’ behavior (demeaning, confrontational, condescending, yelling, and ‘attitude’) toward members of the public.” See April 2020-January 2022 semi-annual reports, available at <https://www.mcso.org/about-us/professional-standards-bureau/semi-annual-reports>.<sup>1</sup>

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<sup>1</sup> This trend may be even more prevalent. In the remaining quarterly report for this two-year period, for January 2021, rude behavior came second after a closely related complaint: “inappropriate language/actions (use of profanity; inappropriate sexual comments or actions; threatening behavior; relationships with victims or inmates; and inappropriate social media posts) toward both employees and members of the public.” See January 2021 semi-annual report, available at <https://www.mcso.org/about-us/professional-standards-bureau/semi-annual-reports>.

If PSB were properly assessing problematic patterns and trends, as Paragraph 250 requires it to do, it would have identified that the agency appears to have an issue with rude behavior toward members of the public. This assessment could have led MCSO to take remedial measures, such as targeted training, audits, and communications to remind deputies of their obligation to be polite and respectful with members of the public. Instead, PSB simply continued—for two years—to keep reporting the same trend each quarter. PSB’s approach of categorizing complaints without assessing the obvious trends in those complaints does not help MCSO decrease the number of the misconduct complaints it receives, and does not comply with Paragraph 250. The Monitor should find PSB out of compliance with this paragraph.

Paragraph 253. This paragraph requires the Bureau of Internal Oversight (BIO) to produce semi-annual public reports on misconduct investigations. The reports must analyze stratified random samples of misconduct investigations to identify any procedural irregularities, including instances in which “deadlines were not met.”

The United States objects to the Monitor’s finding that MCSO is in “full and effective” compliance with this paragraph. Draft Report at 237. BIO’s methodology is inadequate. To determine whether PSB met the applicable deadlines, BIO does not review whether an investigation exceeded the 180-day timeline imposed by the Second Order. Instead, the BIO auditor merely reviews whether the investigator submitted any requests for extensions before any previous extensions had expired. *See, e.g.*, Nov. 2021, Misconduct Investigations Inspection Report, at 7, available at <https://www.mcsobio.org/files/ugd/c866a69e89a016ffff4edc8691908fe8ece9fc.pdf>. This is inconsistent with the Monitor’s own methodology; the Monitor determined in November 2020 that it would not consider investigations timely unless any extension requests were supported by adequate justification. *See* Independent Monitor’s 25<sup>th</sup> Quarterly Report (Nov. 16, 2020) (Doc. 2569) at 190.

Despite the Monitor’s determination, BIO has continued to assess only the timeliness of extension requests, not whether the requests were supported. As a result, BIO continues to find MCSO in compliance for the timeliness of its investigations, even as the agency has amassed a more than 2,000-case backlog in administrative misconduct investigations. If BIO is to serve its function as an internal auditor for MCSO, its auditing methodologies must be reasonably calculated to identify systemic failures. The Monitor should find MCSO out of compliance with this paragraph.

### **Section 13: Community Outreach and Community Advisory Board**

We have no comments on this section.

### **Section 14: Supervision and Staffing**

We have no comments on this section.

### **Section 15: Document Preservation and Production**

We have no comments on this section.

### **Section 16: Additional Training**

We have no comments on this section.

### **Section 17: Complaints and Misconduct Investigations Relating to Members of the Plaintiff Class**

Paragraph 281. Paragraph 281 requires MCSO to ensure that administrative misconduct investigations regarding Class Remedial Matters (CRMs) comply with the Court's orders and MCSO policy, and that CRMs are handled in the same manner that MCSO handles all other complaints and disciplinary matters. MCSO closed four CRMs during this reporting period. Draft Report at 257. We disagree with the Monitor's determination that MCSO complied substantively with Paragraph 281 in its investigation of one CRM for which MCSO concluded the allegations were not sustained or unfounded. *See* Draft Report at 257. It is concerning that some of the deficiencies we identified in this CRM investigation are among the core issues that gave rise to this case. These include MCSO's willingness to evaluate the truthfulness of MCSO personnel during misconduct investigations, and MCSO's ability to develop an adequate investigative plan for evaluating bias in a traffic stop.

In investigating a racial bias allegation, the investigator mischaracterized the evidence and misapplied the "unfounded" disposition. The complainant was incarcerated at the Lower Buckeye Jail for about two days in September 2021. He alleged that a detention officer failed to release him from custody at the court-ordered time, did not allow him to speak to a sergeant about his release, and was racially biased toward him. The investigator asserted that the complainant "provided absolutely nothing to substantiate his claim" of bias, when the complainant told the investigator that the detention officer treated him dismissively while answering the questions of other incarcerated people (who were white) in a nearby cell. MELC0003713121. The investigator did not say whether she tried to contact "inmates in the cell next door," she only wrote that she was "unable to speak" with them. *Id.* The investigator asserted that she "determined, by a clear and convincing margin," that the detention officer did not display any bias because the officer "denied the allegation" and "actions were taken, and inquiries were made regarding" the complainant's release. MELC0003713121-122. But the investigator cited no evidence clearly disproving the allegation of bias. The investigator's analysis may have supported a disposition of "not sustained," but not "unfounded." *See* Second Order at ¶ 208(a) & (c) (defining "not sustained" and "unfounded"); *id.* at ¶ 163 (requiring that "all investigative findings are supported by the appropriate standard of proof and documented in writing").

Additionally, the investigation of the over-detention allegation is an example of overworking a case. The allegation was straightforward: whether MCSO detained the complainant for longer than allowed. The confinement order provided for a 48-hour sentence, and the complainant was ultimately incarcerated for about 49 or 50 hours. Despite this straightforward allegation, PSB's investigative memo in this case was 41 pages long.

Our review of the CRMs this quarter revealed that an MCSO investigator may be undermining the court's orders in this case. PSB investigated a complaint about a deputy being biased in a traffic stop. During PSB's interview of the deputy, the deputy expressed frustration with the complaint and the investigation. In response, an investigator said, "the policies are the way that they are, and they're there for a reason, because of decisions made by the previous administration." The investigator said that anyone can file a complaint for any reason, and "we still have to investigate." The investigator then said to the deputy, "Our feelings [don't] matter because it is what it is, based on a court order and decisions made by the judge." MELC3713683 at 1:24:00-1:25:00. Allowing people to file complaints against deputies and investigating those complaints thoroughly are not just "decisions made by the judge"—they are essential elements of police accountability. These types of comments by investigators undermine the legitimacy of MCSO's own internal investigations, and they raise serious concerns about whether MCSO would maintain constitutionally adequate internal accountability systems without judicial oversight.

### **Section 18: Concluding Remarks**

We have no comments on this section.