

TWELFTH REPORT  
Independent Monitor  
for the  
Maricopa County Sheriff's Office



Reporting Period – First Quarter 2017  
Chief (Ret.) Robert S. Warshaw  
Independent Monitor  
July 28, 2017

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## Section 1: Introduction

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This is the twelfth 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 first quarter of 2017. Subsequent to my appointment, and as a result of further Court proceedings, my duties have been expanded in the areas of community engagement, oversight of internal investigations, independent investigative authority, and review of MCSO's Property Unit.

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 now 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 will 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. For example, the Second Order outlines the duties of the newly created Independent Investigator and the Independent Disciplinary Authority. These are autonomous positions, not subject to oversight of the Court or its Monitor.

The Second Order also delineates in great detail additional 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 Monitor was given the authority to supervise and direct all of the investigations that fall into the latter category.

This report covers the period from January 1-March 31, 2017 – the first quarter in Sheriff Penzone's administration. As noted in our last report, we have welcomed the involvement of and accessibility to the Sheriff and his upper command staff, especially when compared to that of his predecessor. In the past, we were critical of former Sheriff Arpaio's lack of support and participation in the reform process. Under Sheriff Penzone, there is a heightened level of cooperation at the highest levels of the Office. As it pertains to compliance, the Maricopa County Attorney's Office (MCAO) has taken over exclusive representation of MCSO. They too have established a collaborative and collegial working relationship with the Parties and my Team.

That said, the majority of the issues identified in this report have their genesis under the previous administration – and some date back years. While we acknowledge the Sheriff's involvement and his willingness to take ownership of the process, we do not expect that longstanding issues will be resolved in a matter of weeks.

MCSO continues to make steady progress incorporating the elements required by the First Order into its Early Identification System (EIS). At the end of the reporting period, only three EIS items remained outstanding, and the Parties entered in an agreement as to when the items

would be incorporated, and when the required training would commence. However, just prior to our April site visit, MCSO discovered a serious flaw in its traffic stop data, which highlighted the need for greater data quality assurance procedures. The Parties discussed this issue at length during a status conference held during our April site visit; and subsequently agreed upon – and filed with the Court – target dates to resolve this issue. We continue to work with MCSO and the Parties on quality control measures to insure the validity of the traffic stop data. Greater detail is provided in the body of this report.

As noted in our previous reports, Paragraph 165 of the Second Order requires that “[w]ithin 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.” During the first quarter of this year, all involved worked diligently to bring to final form the policies related to misconduct investigations and the administration of discipline. Discussions continued during our last site visit; and during a status conference on April 18, the Parties committed to finalizing and publishing the policies within 30 days. That target date was met.

Pursuant to the Second Order, with the publication of these policies, MCSO is now obligated to provide all supervisors and all personnel assigned to the Professional Standards Bureau (PSB) with 40 hours of comprehensive training on conducting employee misconduct investigations. For several months, we have been providing technical assistance to MCSO’s Training Division and PSB regarding the development and content of this training. Pending the Parties’ review of this training material, MCSO is set to commence delivery of this training. Both the publication of the policies and provision of this training are significant Second Order milestones.

## 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 the agency'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.

In light of the significant number of policies that either had to be created or revised as a result of the Second Order, described above, we have deviated from this practice in our two last quarterly status reports. If we note that MCSO is complying in practice with Paragraph requirements that have not yet been memorialized in policy, we are, for now, still recognizing Phase 2 compliance for these Paragraphs, to document MCSO's practices during the policy development process. However, we consider this a special one-time accommodation that will not last indefinitely and shall be continued only if we are satisfied that there is an organizational resolve to commit the time and resources to create and revise policies as required. During this reporting period, there were 55 such instances – all but one in Paragraphs of the Second Order. If MCSO does not publish the requisite policies prior to the drafting of our next quarterly status report, compliance with these Paragraphs will revert to Deferred.

The tables below summarize the compliance status of Paragraphs tracked in this report.<sup>1</sup> As noted above, this is our third quarterly status report in which we report on MCSO's compliance with both the First and Second Orders. During this reporting period, MCSO's overall Phase 1 compliance rate with the **First Order** increased by 16 percentage points, from 63% to 79%. This is in large part due to the publication of GH-5 (Early Identification System).<sup>2</sup> MCSO's overall Phase 1 compliance rate with the **Second Order** increased by two percentage points, from 10% to 12%. As with the last two reporting periods, these Second Order Phase 1 compliance percentages remain at such low numbers due to the large group of policies requiring changes for the Second Order, some of which are also used for compliance with the First Order.

During this reporting period, MCSO's overall Phase 2 compliance rate with the **First Order** increased by seven percentage points, from 50% to 57%. MCSO's overall Phase 2 compliance rate with the **Second Order** increased by 14 percentage points, from 46% to 60%.

<b>Twelfth Quarterly Report First Order Summary</b>		
<b>Compliance Status</b>	<b>Phase 1</b>	<b>Phase 2</b>
Not Applicable	14	1
Deferred	0	7
Not in Compliance	16	31
In Compliance	59	50
<b>Percent in Compliance</b>	<b>79%</b>	<b>57%</b>

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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 180 for Phase 1. The number of Paragraphs included in the denominator totals 202 for Phase 2.

<sup>2</sup> Phase 1 compliance is normally not granted until training on the policy has been completed. We have made an exception in this case since MCSO has been using the EIS while it has been in development, and the Parties have stipulated to a date by which the training must be completed.

<b>Twelfth Quarterly Report Second Order Summary</b>		
<b>Compliance Status</b>	<b>Phase 1</b>	<b>Phase 2</b>
Not Applicable	18	9
Deferred	1	10
Not in Compliance	91	36
In Compliance	13	68
<b>Percent in Compliance</b>	<b>12%</b>	<b>60%</b>

<b>Twelfth Quarterly Report Overall Summary</b>		
<b>Compliance Status</b>	<b>Phase 1</b>	<b>Phase 2</b>
Not Applicable	32	10
Deferred	1	17
Not in Compliance	107	67
In Compliance	72	118
<b>Percent in Compliance</b>	<b>40%</b>	<b>58%</b>

<b>MCSO's Compliance with the Requirements of the First Order (October 2, 2013)</b>												
	<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>Report 11</b>	<b>Report 12</b>
<b>Phase 1</b>	4%	10%	44%	40%	51%	57%	61%	60%	67%	60%	63%	79%
<b>Phase 2</b>	0%	0%	26%	25%	28%	37%	38%	39%	44%	49%	50%	57%

MCSO's Compliance with the Requirements of the <b>Second Order</b> ( <i>July 20, 2016</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>Report 11</b>	<b>Report 12</b>
<b>Phase 1</b>	N/A									1%	10%	12%
<b>Phase 2</b>	N/A									43%	46%	60%

## 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.*

**Phase 1:** In compliance

- Court Implementation Division Operations Manual, currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In compliance

To verify Phase 2 compliance with this Paragraph, we reviewed monthly rosters for this reporting period. The former CID Captain was promoted, and a lieutenant who has been assigned to the division now serves as both Acting CID Captain and our single point of contact, as required by this Paragraph. In addition, during this reporting period, CID hired a new management assistant and an administrative assistant.

CID currently consists of two lieutenants (one of whom serves as Acting Captain), six sergeants, two deputies, one management assistant, and one administrative assistant. The division continues to be supported by 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. The Monitoring Team, the Plaintiffs, and the Plaintiff-Intervenors receive all files and documents simultaneously, with only a few exceptions centering on open internal investigations. CID effectively facilitates the Monitor and Parties' access to MCSO's personnel.

**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.*

**Phase 1:** In compliance

- Court Implementation Division Operations Manual, currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In compliance

As discussed above, during this reporting period, CID continued to be responsive to our requests.

**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.*

**Phase 1:** In compliance

- Court Implementation Division Operations Manual, currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In compliance

On June 19, 2017, CID published its most recent quarterly report as required by this Paragraph. The report covers the period from January 1-March 31, 2017, the first 90 days of Sheriff Penzone's tenure. This report is divided into the Order sections, which in turn are divided among its numbered Paragraphs. For each section, MCSO provides an overview of the agency's activities working toward compliance. For each Paragraph, MCSO offers comments on the compliance status and provides responses to concerns raised in our previous quarterly status report, published May 5, 2017. MCSO's report, as in the past, includes a table developed with the information provided in our previous quarterly status report.

The report also highlights the structural and personnel changes within the organization, including at the executive command staff level, since Sheriff Penzone took office. The report stresses the agency's belief in the collaborative process currently in place among the Monitor, MCSO, and the Parties. In addition, MCSO notes in its report that it has established several community advisory boards to help rebuild community relations and public trust. Recently, MCSO has been working with the Parties and the Monitoring Team to revert the community engagement obligations of the First Order to MCSO.

The report documents in detail the steps MCSO has taken to implement the requirements of both Orders. The most recent highlights include the approval of GH-2 (Internal Investigations), GH-5 (Early Identification System), GC-17 (Employee Disciplinary Procedures), and the delivery of the Employee Performance Appraisal (EPA) Training.

**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.*

**Phase 1:** In compliance

- Court Implementation Division Operations Manual, currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In compliance

See Paragraph 13.

**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).*

**Phase 1:** In compliance

- Court Implementation Division Operations Manual, currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In compliance

CID and the Monitoring Team 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 will submit reports on or before September 15 of each year.

Consistent with this agreement, on September 15, 2016, MCSO filed with the Court its 2016 Annual Compliance Report in compliance with this Paragraph. We reviewed this report in detail and raised follow-up questions with CID personnel during our October 2016 site visit.

## 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 November 3, 2016.

#### **Phase 2:** Deferred

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 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 Order for our review and that of the Plaintiffs. MCSO received our feedback on these policies, which also included the Plaintiffs' comments, 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 our April and July 2016 site visits, MCSO requested more specific guidance on what we considered to be Patrol-related policies and procedures. In response, on August 5, 2016, 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, and we informed MCSO that it could achieve compliance with Paragraph 19 when it provided sufficient documentation of its completed review of all Patrol-related policies.

In its response, MCSO noted that several policies were currently in compliance with the First and Second Orders. However, MCSO also determined that several policies required changes to comport with the First Order, Second Order, or both. MCSO continues to make the necessary revisions on these policies. For this reason, we are continuing to defer our compliance assessment with Paragraph 19 for this reporting period.

**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.*

**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.*

**Phase 1:** In compliance

- CP-2 (Code of Conduct), most recently amended on January 6, 2017.
- CP-8 (Preventing Racial and other Bias-Based Policing), most recently amended on August 2, 2016.
- EA-5 (Enforcement Communications), most recently amended on December 8, 2016.
- EA-11 (Arrest Procedures), most recently amended on June 15, 2016.
- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- GJ-33 (Significant Operations), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** Not applicable

After addressing the policy deficiencies previously noted by the Monitoring Team, MCSO developed and published the policies required by Paragraph 21. MCSO distributed and specifically trained to these policies to agency personnel during the required Fourth and Fourteenth Amendment training conducted by MCSO in 2014. A Monitoring Team member observed specific references to areas of required compliance in this Section during the training.

MCSO's implementation of these policies is covered in the other Paragraphs of the Order.

***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 August 2, 2016.
- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** Not in compliance

BIO has made some changes and adjustments in the way it captures and reports information related to sworn and Detention supervisors reinforcing the prohibition against discriminatory policing. In the first quarter of 2016, we agreed to MCSO's methodology that randomly selects the personnel to be inspected during the first month of the reporting period. MCSO then inspects the Supervisory Notes on these same employees for the remaining two months of the reporting period, as well. This allows for the review of all notes on individual employees for a full three-month period. This methodology facilitates the improved review and evaluation of supervisors' interactions with employees, as it relates to the reinforcement of policies prohibiting racial and biased-based profiling. We also continue to remind MCSO that compliance with this Paragraph is dependent on specific and articulated reinforcement from supervisors – not merely an entry that there is no indication of any discriminatory policing.

For the audit of Supervisory Notes of sworn personnel for this reporting period, we selected a random sample of 36 employees. MCSO then audited the Supervisory Notes pertaining to the selected employees. In its inspection report for the fourth quarter, BIO reported an 88% compliance rate. We reviewed the same Supervisory Notes and affirmed BIO's findings. Five deputies lacked documentation on Supervisory Note entries with regard to CP-8 (Preventing Racial and Other Biased-Based Profiling). The compliance rate for sworn personnel for the first quarter of 2017 is 88%. The Supervisory Notes for sworn personnel, as it pertains to this Paragraph, had been in 100% compliance previously. In our visits to Districts 1, 3, and 7 in April, we discussed the importance of reaffirming CP-8 as required by this Paragraph.

For the audit of Detention Supervisory Notes for this reporting period, the Monitoring Team randomly selected 35 employees. In its inspection report for the first quarter, dated April 27, 2017, BIO reported a 97.14% compliance rate. MCSO conducted an audit of the Supervisory

Notes pertaining to the 35 selected employees. BIO found that 34 of the 35 employees had an appropriate supervisory entry reiterating that discriminatory policing is unacceptable. We reviewed the same Detention Supervisory Notes and affirmed BIO's findings. MCSO was in compliance with this Paragraph with regard to Detention personnel, with a 97% compliance rate. However, for this reporting period, MCSO underperformed in its compliance rate for sworn personnel, with 88%.

Also during this reporting period, BIO conducted audits of employee emails and CAD messaging, and reported three facility inspections on the mcsobio.org website. The outcomes of these audits and inspections are covered in Paragraph 23.

**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.*

**Phase 1:** In compliance

- CP-2 (Code of Conduct), most recently amended on January 6, 2017.

**Phase 2:** In compliance

BIO uses a randomizing program to select samples for each inspection. BIO reviews CAD messages in an effort to identify compliance with MCSO policies CP-2 (Code of Conduct), CP-3 (Workplace Professionalism), and GM-1 (Electronic Communications and Voicemail). In its submission, MCSO includes the specific nature of any potential concerns identified during the audits. In May 2016, a Monitoring Team member 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.

During this reporting period, MCSO conducted three CAD and Alpha Paging audits. BIO inspected 7,317 CAD/Alpha Paging messages for January 2017 and reported a 100% compliance rate. BIO inspected 6,499 CAD/Alpha Paging messages for February 2017 and reported a 100% compliance rate. BIO inspected 26,326 CAD/Alpha Paging messages for March 2017 and reported a 99.99% compliance rate.

During this reporting period, MCSO conducted three email audits. For January 2017, the BIO Inspection Report (BI2017-0010) stated that there were a total of 10,876 emails, of which 8,786 were reviewed. The number of emails reviewed is generally less than the total number of emails due to the elimination of routine business-related and administrative emails generated by the Office, such as training announcements and Administrative Broadcasts. The BIO Inspection Report for January 2017 states that BIO found that 8,785 of the inspected emails were in compliance, for a 99.99% compliance rate. There was one instance where BIO found deficiencies in violation of GM-1 (Electronic Communications and Voicemail). The deficiency was appropriately addressed. BIO inspected 6,965 of 7,575 emails for February 2017 (Inspection Report BI2017-0024) and reported a 99.96% compliance rate. BIO discovered two

emails with inappropriate content, and issued BIO Action Forms to Detention personnel. BIO inspected 8,942 of 11,486 emails for March (Inspection Report BI2017-0037) and reported a 100% compliance rate, finding no deficiencies.

During this reporting period, BIO conducted three facility inspections: one in January, one in February, and one in March. These inspections were conducted at the Fourth Avenue Jail, a multi-level detention facility that houses prisoners with various security classifications; the Durango Jail, which primarily houses prisoners with minimum and medium security classifications; and Patrol District 4.

The audit of the Fourth Avenue Jail found one deficiency: one of the three housing unit journals inspected lacked an entry, indicating that a required daily inspection was not conducted on January 17, 2017. The audit of the Durango Jail identified one deficiency: one of the three housing unit journals inspected lacked an entry documenting the required headcounts during the first shift on March 15, 2017. One deficiency was noted in District 4 pertaining to property and evidence. The audit found one unsecured, unlabeled can of lighter fluid. It was brought to the attention of the District Property and Evidence Custodian, and the item was properly secured as found property.

All three audits found that there was no evidence indicating that any of the facilities were used in a manner that would discriminate, or denigrate anyone on the basis of race, color, national origin, age, religious beliefs, gender, culture, sexual orientation, veteran status, or disability. We reviewed the matrix checklist used for these inspections, and it contains a specific question regarding the use of any Office or County equipment that would be a violation of this Paragraph. During our April 2017 site visit, we visited Districts 1, 3, and 7; and found no signage, pictures, or other indication of County property used in violation of this Paragraph.

***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.*

**Phase 1:** Not in compliance

- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), currently under revision. This policy was trained to during the Fourth and Fourteenth Amendment training completed by MCSO in 2014. While this policy, in its current form, addresses traffic contacts, it does not address any information that MCSO receives from the public through other means upon which it may base its law enforcement actions.

We will assess Phase 1 compliance with this Paragraph once MCSO publishes the policies and procedures for the SILO Unit.

**Phase 2:** Deferred

In April 2014, we met with MCSO personnel to determine what methods they employed to receive information from the public regarding criminal activity. Since that time, MCSO has provided us with the information on all hotlines and tip-lines currently in use.

The Judicial Enforcement Division maintains one tip-line and one website, both of which are dedicated to the Sheriff's Office Deadbeat Parent Program. This program is focused on civil arrest warrants for failure to pay child support, and arresting authority is limited by statute. MCSO completes basic intelligence and makes a follow-up call. If a civil warrant is found, it is assigned to a deputy who will attempt to locate the wanted subject. During this reporting period, the Judicial Enforcement Division reported that it received 28 tips. MCSO did not conduct any operations that were relevant to this Paragraph.

Enforcement Support receives tips that are not all tracked or recorded. The information received is related to arrest warrants. A Posse member tracks the tips that are distributed on a spreadsheet. During this reporting period, Enforcement Support reported that it received 331 tips. There were no operations conducted that were relevant to this Paragraph.

The Major Crimes Division manages one active hotline and an associated electronic mailbox that community members can use to report complaints of suspected animal abuse. Both are advertised on MCSO's website. During this reporting period, the Major Crimes Division reported that it received 135 tips related to animal abuse. MCSO did not conduct any operations that were relevant to this Paragraph.

Special Investigations maintains a Drug Line Report. This report contains information provided by callers regarding possible drug activity. The form includes fields for a call number, call time, category of possible offense, reported details, and disposition. The Special Investigations Division reported that it received 36 tips via its drug tip-line. We reviewed these and found no evidence of bias or requests for law enforcement based on race or ethnicity. MCSO did not conduct any operations that were relevant to this Paragraph.

We continue to review the tip information received by Major Crimes, Enforcement Support, Civil, and Special Investigations for each reporting period; and find generally that all tips are consistent with the mission of each tip-line.

Each District in the Patrol Division provides a separate response each month regarding how it responds to complaints from the public, and how it conducts operations as a result:

- District 1 reported, "All calls of this nature would be directed to MCSO Communications to dispatch a Deputy to respond and take a report. Any call regarding drug activity would be directed to MCSO Drug Hotline, which is administrated by MCSO Special Investigations Division." District 1 advised us that it had no system outside of those noted that would allow a community member to call in and report a crime. If a community member called the District, s/he would be referred to MCSO Communications. During this reporting period, District 1 did not report any activity relevant to this Paragraph, and no operations were conducted.

- District 2 reported that it does not have any dedicated hotline or tip-line telephone numbers or other such methods specifically to capture or receive complaints from community members regarding potential criminal activity. In general, the District has a main telephone number for any calls incoming to the District. During this reporting period, District 2 did not report any activity relevant to this Paragraph, and no operations were conducted.
- District 3 reported that it accepts complaints from community members regarding potential criminal activity via mail, email, telephone, and walk-up traffic. It does not track actions taken regarding these complaints, but reported that they are generally assigned to the supervisor most able to respond to the complaint. During this reporting period, District 3 did not report any activity relevant to this Paragraph, and no operations were conducted.
- District 4 reported that it does not currently have a hotline designated to receive complaints from members of the community within its jurisdiction. District 4 reported that it receives complaints from community members in the following ways: walk-up traffic; telephone calls; emails; and notifications of complaints via mcs.org (forwarded to the captain from Headquarters). District 4 reported receiving 11 traffic- and parking-related complaints from community members during this reporting period, but these did not result in any operations relevant to compliance with this Paragraph.
- District 6 reported that it serves the town of Queen Creek pursuant to a law enforcement contract. As Queen Creek's primary law enforcement entity, it is responsible to police town ordinances/codes as well as applicable state law. District 6 reported that it has a web-based application that is used by community members to report local issues related to town services. District 6 received three concerns from the public during this reporting period, two of which were traffic complaints. The third complaint was a letter alleging unfair labor practices by an undocumented immigrant employing other undocumented immigrants. This complaint was referred to the National Labor Relations Board. None of the concerns noted in the District 6 response resulted in any operations relevant to this Paragraph.
- District 7 reported that it uses a Request for Enforcement Services/Community Service Form, which members of the public complete for specific enforcement for patrols such as speed enforcement or extra patrols because of potentially reoccurring problems such as criminal damage or vandalism. These forms are given to the Patrol sergeants to assign to deputies. District 7 has reported that it does not track or keep any documentation as to what follow-up is completed. District 7 also reported that it participates in "Text-A-Tip" in Fountain Hills. Tips generated in this program are completely anonymous. District 7 investigates the tips whenever possible, but reports that the tips are not always entered into the website. District 7 received a total of 78 "Text-A-Tips" during this reporting period. We reviewed the documentation submitted and did not find any tips that were relevant to compliance with the requirements of this Paragraph, and no operations were conducted.

- Lake Patrol reported that it “does not have any established email addresses or hotlines which community members can utilize to report potential criminal activity.” All information relating to potential activity is forwarded to Lake Patrol via the MCSO Communications Division. Lake Patrol reported that it had not received any information from community members regarding criminal activity during this reporting period.

During this reporting period, none of our reviews have revealed any tips or public complaints that could be perceived as racially biased. However, MCSO has not employed a consistent methodology or tracking system for tips or requests for enforcement action. The present system used does not effectively track tips and outcomes in a commonly used format.

In February 2016, MCSO informed us that it was creating a new unit, the Sheriff’s Intelligence Leads and Operations (SILO). Per MCSO, the unit staffing would include a supervisor, two criminal intelligence analysts, and two investigative research specialists. The SILO Unit would report to the captain assigned to the Arizona Counter Terrorism Information Center (ACTIC). The unit’s primary responsibility would be to vet, corroborate, and disseminate to the appropriate divisions valid tip information that requires follow-up action. In addition to creating this specialized unit, MCSO would also identify specific personnel in other law enforcement agencies to whom it can forward tip information when appropriate.

During our subsequent site visits in April, July, and October 2016, we met with MCSO personnel and discussed the progress of the SILO Unit and the development of any relevant policies. The unit’s guiding policies are GI-7 (Bias Free Tip and Information Processing) and GN-1 (Criminal Intelligence Operations). GN-1 establishes guidelines on the collection, evaluation, and dissemination of criminal intelligence. During our site visits in 2016, MCSO routinely advised us that the database the SILO Unit was using to track tips had several issues that needed correction.

Since our initial meeting in February 2016, the SILO Unit has undergone several stages of hiring and losing personnel, but it has never reached full staffing. During our January 2017 site visit, we met with MCSO staff to inquire on the progress of the SILO Unit, and to ascertain if there had been any change in plans due to the new administration. MCSO personnel advised us that the blueprint for the unit remained the same, and that the plans were moving forward. We learned that the SILO Unit would be managed out of the ACTIC, under the command of the captain who was assigned there. At that time, the staffing for the SILO Unit was projected to include five management assistants and a unit supervisor. The SILO Unit had recently lost two employees. During the time of our January 2017 site visit, the captain was actively recruiting new analysts.

During our April 2017 site visit, we again met with MCSO staff to discuss the progress of the SILO Unit. We learned that between our site visits, the SILO Unit had lost three of its Intelligence Research Analysts. However, also during this period, the SILO Unit was able to replace two of the Intelligence Research Analysts. The two new employees were being trained. MCSO advised us that it had interviewed several potential candidates with the intent of filling the remaining three vacant positions. We learned that the SILO Unit purchased a new database, TipSoft, to track incoming tips. Per MCSO, the previous database had numerous problems, and the new software solution is expected to meet the requirements of the SILO Unit. During our site visit, we learned that the captain assigned to ACTIC (SILO unit commander) would be reassigned to Patrol District 2. We will continue to monitor the progress of the SILO Unit.

***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), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EA-5 (Enforcement Communications), most recently amended on December 8, 2016.
- CP-8 (Preventing Racial and other Bias-Based Policing), most recently amended on August 2, 2016.
- EA-11 (Arrest Procedures), most recently amended on June 15, 2016.

**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, Vehicle Stop Contact Form Supplemental Sheet, Incidental Contact Sheet, 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 the Order for Paragraphs 25 and 54. In addition, during our site visits, we meet with Arizona State University personnel and review the analysis of the traffic stop data they present. 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. 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.

Our review of a sample of 105 traffic stops that occurred during this reporting period in Districts 1, 2, 3, 4, 6, and 7, and Lake Patrol indicated that MCSO was following protocol, and that the stops did not violate the Order or internal policies. During our April 2017 site visit, we met with the commanding officers from Districts 1, 3, and 7, who advised us that they had not received any complaints during this reporting period from Latino drivers alleging racial profiling. We interviewed the District Commanders and inquired if their respective Districts had received any complaints alleging selective enforcement targeting specific communities or enforcement based on race. None of the District Commanders were aware of any complaints alleging racial or ethnic-based traffic enforcement. 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. The first comprehensive analysis completed by ASU was issued during the second quarter of 2016, and MCSO and ASU presented a draft of ASU's Second Annual Report during our October 2016 site visit. There were some data issues with this report; and during our January 2017 site visit, MCSO advised us that a final draft would be forthcoming in early 2017. MCSO personnel subsequently advised us that they discovered a serious data flaw just prior to our April site visit, calling into question MCSO's and MCSO's contractor's data quality assurance practices, and indicating that some parts of the analyses included in the annual reports needed to be adjusted. The Monitoring Team, the Parties, and MCSO are working to clarify if any of the collected traffic stop data, is in fact, indicative of biased-based policing. While that process continues, MCSO's compliance with this Subparagraph is deferred.

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. MCSO policy 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 the reporting period, the most common traffic stop violations are as follows: 55 stops for speed above the posted limit (52%); 14 stops for failure to possess valid registrations or tags (13%); 13 stops for failing to obey official traffic control devices (12%); 13 stops for equipment violations (12%); and 10 stops for other moving violations (10%).

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 MCSO deputies during the stop to make a determination if the stop is justified and fulfills the requirements of this Paragraph. When we review the sample traffic stops from across all Districts during the reporting period, we note the locations of the stops contained on the Vehicle Stop Contact Form, the CAD printout, and the I/Viewer system to ensure that they are accurate. Our review of the data indicates that MCSO is 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. During our April site visits to Districts 1, 3, and 7, we inquired if the District Commanders had received any complaints from the public, regarding MCSO enforcement activities in their communities. None of the Districts had received any complaints with regard to racial or ethnic-based targeted enforcement.

MCSO is 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. During this reporting period's review of the traffic stop data, we reviewed 30 instances where the deputy contacted passengers. In 12 cases, the contact with passengers was due to the driver being arrested. In four cases, the passengers were contacted as part of the process of verifying the vehicle's registration and insurance information. In the remaining instances where MCSO made contact with passengers, the following occurred:

- In one case, the deputy asked both the driver and passenger to exit the vehicle for a K-9 narcotics search. The dog alerted to a bag in the backseat, which contained several thousand dollars in cash. The deputy questioned the driver and passenger about the cash. After they offered inconsistent explanations of where it came from and what it was intended for, the deputy seized the money pursuant to a money laundering investigation. This case involved a Latino male and a Latina female.
- In one case, the deputy asked the passenger to drive the vehicle after the conclusion of the stop. The driver had admitted to drinking, but he was not sufficiently impaired for an arrest. This case involved a white male and a white female.
- In one stop, a deputy requested identification from a juvenile white male driver and a white female passenger to verify compliance with a curfew.
- In one stop, the Latino driver did not speak English and the Latina passenger interpreted for the deputy.
- In one case, the Latina driver did not speak English and the Black male passenger interpreted for the deputy.
- In one case, a white driver was stopped for not having a license plate light. The deputies detected a strong odor of burnt marijuana. A search of the vehicle resulted in the confiscation of marijuana and psilocybin mushrooms. The driver told deputies that the drugs belonged to the Latino passenger. The passenger admitted the narcotics were his, and he was arrested for possession of marijuana and dangerous drugs.
- In one traffic stop, the deputy noted a strong odor of burnt marijuana and inquired if the driver or the passenger had a medical marijuana card. The passenger voluntarily produced a pipe and a partially smoked marijuana cigarette. The passenger was cited and released. This case involved two Black females.
- In one case, after the stop, the passenger volunteered information as to where the couple was driving. This case involved a white male and a white female.

- In one stop, the passenger voluntarily provided his identification to the deputy. This case involved two white males.
- In one case, the passenger was helping the driver find an address and spoke to the deputy about directions. This case involved two white males.
- There was one case where we could not verify the reason for passenger contact because there was no BWC recording. This case involved a white female driver who was arrested on a warrant, a white male passenger, and a white female passenger. We have met with MCSO regarding the late activation and failure to activate cameras. MCSO advised us that on some stops, the failure could be attributed to technical issues, while others are a result of human error. We have no indication as to the reason for the failure to record on this stop.
- In one case, the deputy knew the white male driver and two of the passengers in the vehicle from previous encounters. The driver was known to not have a valid driver's license, and a white female passenger was known to have a warrant for her arrest. The driver was cited and released, and the passenger with the warrant was arrested. The deputy asked a third passenger, a Latina female, if she had a valid driver's license to drive the vehicle.
- In one stop, the deputy detected the odor of burnt marijuana and inquired if any of the occupants in the vehicle had a marijuana medical card. One of the passengers was carrying a loaded firearm and voluntarily submitted it to the deputy for an NCIC (National Crime Information Center) check of the serial number.
- In one traffic stop, an elderly white male driver was driving erratically. The white female passenger was asked if she had a driver's license so that she could drive the vehicle.

We reviewed the demographic data of Maricopa County (according to 2014 U.S. Census data, 30.3% of the population is Latino), and found that the ratio of the ethnicity of the violators and passengers in the population was in range with the ethnicity of the individuals stopped. (See Paragraph 54.e.). Five (17%) of the 30 stops where passenger contacts occurred involved Latinos. A review of citizen complaints for the reporting period did not reveal any accusations against MCSO personnel that would indicate that deputies were conducting pre-textual traffic stops to question drivers or passengers regarding their ethnicity, or to determine whether they are unlawfully present in the country. 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. One stop did not contain a BWC recording, and therefore we could not verify the information in the VSCF, as it pertains to the passenger contact.

During our previous ride-alongs with deputies during daylight hours, there were many instances where, at the time of the stop, we could not determine the ethnicity or gender of the driver or passengers until the vehicle was approached. During this reporting period, we observed that 30 of the 105 stops occurred during nighttime hours. During our site visits to Districts 1, 3, and 7 in April, we inquired if any Latino drivers or passengers made any complaints regarding

deputies using particular tactics or procedures to target Latinos. None of the personnel we interviewed were aware of any complaints alleging discrimination or the targeting of Latinos in traffic enforcement. Our review of the sample data indicated that traffic stops generally were not based on race or ethnicity and reflected the general makeup of the population of the County. 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 video revealed that deputies were not making traffic stops using tactics based on race or ethnicity. We continue to find traffic-related events wherein deputies are classifying Latino drivers as white on the Vehicle Stop Contact Forms. During this reporting period, we also noted some drivers with Anglo-Saxon surnames classified as Latino on the VSCFs. Supervisors are generally performing timely reviews of VSCFs, but they must be more attentive to the deficiencies we have noted in past reviews. (See Paragraph 54.e.) MCSO remains in compliance with 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. We reviewed 30 CAD audio recordings; in each, the deputy advised dispatch of the reason for the stop. Through our reviews of BWC recordings, we confirmed that the reason for the stop was voiced prior to making contact with the drivers in 28 of the 30 cases we reviewed. There were two cases where we could not confirm if the deputy provided to Communications the reason for the stop prior to making contact with the occupants of the vehicle. In one case, the deputy had already made contact with the driver when the BWC started recording. In another case, there was no BWC recording. Both of these cases had CAD audio; however, CAD audio is not date- or time-stamped. For the 75 other cases that were part of our sample, we reviewed the VSCFs and the CAD printouts, if included in the documentation, to ensure that deputies were properly advising dispatch of the reason for the stop prior to making contact with the violator. When the deputy advises Communications of the location, tag number, and reason for the stop, this information is digitally logged on the CAD printout. (See Paragraph 54.e.) 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. In our review of 105 traffic stops, we determined that 16 stops were extended and justified due to the circumstances of the stops. The particulars of these extended stops are as follows:

- A deputy observed two Latino male drivers, in separate vehicles, drag-racing on a city street. The deputy noted the vehicles' license plate numbers and followed the speeding vehicles. The deputy eventually caught up to one of the vehicles. The deputy activated

his emergency lights and pulled over the first driver. He told the first driver to wait for his return on the side of the roadway. The deputy then proceeded to locate the second vehicle and advised another deputy to stand by with the first vehicle. The deputy then located and stopped the second vehicle. The second driver was issued a citation. The back-up deputy advised the primary deputy that the first vehicle had left the scene. The deputy obtained the address of the first driver via a license plate check and responded to the address. The first driver was issued a citation. This was one of the traffic stops selected for BWC review. The BWC recordings and CAD audio from this event were not available.

- A Black female driver was stopped for driving with a suspended license plate. The driver did not have any identification. A warrants check on the driver revealed two active warrants. The driver was arrested and the vehicle was towed.
- A Black female driver was stopped for an illegal U-turn. The driver had a suspended license. The driver was issued a citation and the vehicle was towed.
- A Latino male driver was stopped for driving without taillights. The driver did not have a valid driver's license and was issued a citation. The deputy conducted an inventory search and towed the vehicle. The duration of the stop was approximately 49 minutes.
- A Latino male driver was stopped for failure to stop at a red light. According to the CAD audio recording, the CAD printout, and the written warning, the violation was failure to stop for a red light. In the VSCF, the deputy noted that the driver failed to stop at a stop sign. In the BWC recording, the deputy told the driver that the reason for the stop was that he had made a right turn and failed to stop at the stop sign. The BWC recording started sometime after the deputy decided to make a stop, and the deputy already had his vehicle's emergency lights on. The violation was not captured in the recording. In the CAD audio, the deputy stated that the driver was pulled over for running a red light. The deputy inquired if the driver had anything to drink; and the driver responded by saying, "Not really." The driver was slow to respond, and later it was discovered that he was a diabetic, possibly contributing to the manner of his responses. A roadside breath test and Horizontal Gaze Nystagmus (HGN) test were negative, and the deputy requested a Drug Recognition Expert (DRE). The deputy's supervisor responded and evaluated the driver, and the supervisor confirmed that he was not impaired. The driver was given a written warning and released. The duration of the stop was 46 minutes. The deficiencies we found with this stop were the inconsistencies in the listed reason for the stop, and the failure of the deputy to note on the VSCF that a second deputy appeared on the scene.
- A white male driver was stopped for an expired registration. The driver was a minor, and the vehicle was registered to the driver's father. The tag on the vehicle was not the registered plate, and the deputy had to contact the vehicle's owner by phone to inquire about the registration.

- A Latino male driver was stopped for speeding. The driver did not speak English, and the deputy did not speak Spanish. The deputy had to locate the account number for the interpretation line, as he did not have it. After obtaining the information from another deputy, the interpretation was done, and the deputy cited the driver for speeding. The duration of the stop was 32 minutes.
- A white male driver was stopped for failure to drive in the designated lane. The driver was issued a warning. The stop was delayed because of a technical problem with TraCS.
- A white male driver was stopped for an expired registration. The driver was issued a citation for no registration. The stop was delayed due to a vehicle identification number investigation.
- A white male driver was stopped for performing “wheelies” on his motorcycle. The deputy knew the driver from previous encounters for the same violation. The driver did not have a motorcycle endorsement on his license. The driver was cited and released.
- A Latina juvenile female driver and a Latina adult passenger (owner of the vehicle) were stopped while driving an ATV on a roadway in Tonto National Forest. Neither driver nor passenger had eye protection. The license plate was registered to a different vehicle, and the stop was delayed while the deputy sorted out the proper registration. The passenger was cited for allowing a person under 18 to drive without a helmet or eye protection. The duration of the stop was 27 minutes.
- A white female driver was stopped for driving with a revoked license. The driver was cited and released. The vehicle was impounded.
- A Latino driver, with a Latina passenger and three small children, was stopped for having flashing blue lights in front of the vehicle. The driver did not have a driver’s license or any form of identification. The driver was issued a citation. The vehicle was inventoried and towed. The stop was delayed due to a family member having to respond to pick up the driver and passengers. The duration of the stop was 128 minutes.
- A Latina driver was stopped for speeding. The driver was not able to produce all required documents. After the deputy issued a citation, the driver located the required documents and the citation was rewritten. The duration of the stop was 26 minutes.
- A Latina driver, with a Black male passenger, was stopped for speeding. The driver did not speak English and the passenger acted as interpreter. The driver was issued a warning. The duration of the stop was 24 minutes.
- An out-of-state Latino driver was stopped for failure to stop at a stop sign. The driver had difficulty finding his driver’s license, and the vehicle’s registration was expired. The driver was issued a warning for the stop sign violation, but was cited for the expired registration. The duration of the stop was 35 minutes.

MCSO is in compliance with this Subparagraph.

Paragraph 25.h. requires the duration of each traffic stop to be recorded. In our review, we determined that the duration was recorded accurately in 104 of the 105 traffic stops. One stop did not contain the VSCF, and we were unable to determine if the duration of the stop was accurately 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 will automatically create a red field in the stop contact times if the deputy manually changes these times on the VSCF. MCSO is in compliance with this Subparagraph, with a 99% compliance rating.

As we noted in Paragraph 25g, the supervisor is required to review all traffic stop activity by deputies and should catch any discrepancies and provide appropriate counseling. (See Paragraphs 54.b. and 54.i.)

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 license or other state-issued identification. The Plaintiffs' attorneys and MCSO have agreed on acceptable forms of identification, and this information has been included in the Fourth and Fourteenth Amendment training conducted by outside consultants. Policy EA-11 (Arrest Procedures), most recently amended on June 15, 2016, provides a list of acceptable forms of identification if a valid or invalid driver's license cannot be produced. Only driver licenses, with seven exceptions (drivers did not have a valid license on his/her person), were presented to deputies in all of the cases provided in our sample. Three of these exceptions involved Latino drivers. The seven cases are described in detail below:

- A Black female driver was stopped for driving with a suspended license plate. The driver did not have any identification. A warrants check on the driver revealed two active warrants. The driver was arrested and the vehicle was towed.
- A Black female driver was stopped for an illegal U-turn. The driver had a suspended license. The driver was issued a citation and the vehicle was towed.
- A Latino male driver was stopped for driving without taillights. The driver did not have a valid driver's license. The driver was issued a citation and the vehicle was towed.
- A Latino male driver was stopped for driving without working taillights. The driver did not have a license. The driver was cited and the vehicle was towed.
- A Latino driver, with a Latina passenger and three small children, was stopped for having flashing blue lights in the vehicle. The driver did not have a driver's license or any form of identification. The driver was issued a citation. The vehicle was towed.
- A white female driver was stopped for driving with a revoked license. The driver was cited and released. A search incident to arrest revealed narcotics. The vehicle was towed.

- A Native American Indian male driver was stopped for driving without taillights. The driver did not have a valid driver's license. The driver also provided his brother's name to the deputy and was charged with providing false information to a law enforcement officer. The driver also had a warrant. The driver was arrested on several charges.

MCSO is 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. For this reporting period, we did not find any instances where a deputy requested, or was provided with, a Social Security Number by the driver or passengers. We reviewed 31 traffic stops to evaluate the body-worn camera video/audio interactions of the deputies to determine if they are abiding by the requirements of the Order. We did not find any evidence of deputies asking for Social Security Numbers or Social Security cards.

MCSO is in compliance with this Subparagraph.

***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:*

- 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;*
- 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;*
- 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;*
- 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;*
- 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*
- 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).*

**Phase 1:** In compliance

- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EA-11 (Arrest Procedures), most recently amended on June 15, 2016.

**Phase 2:** In compliance

During this reporting period, MCSO again reported that there were no immigration-related arrests or investigations; or investigations for misconduct with weapons, forgery, or any other immigration-related crime. The majority of arrests made by the Anti-Trafficking Unit during this reporting period were related to narcotics. The exceptions to narcotics-related arrests were arrests for fraud, forgery, burglary, theft, domestic violence, sex crimes, participation in street gangs, and outstanding warrants.

This Paragraph requires that a deputy notify his/her supervisor of any arrest of a vehicle passenger for any crime related to the lack of an identity document. MCSO reported that four such arrests occurred during this reporting period. We reviewed the documentation for each incident and found that deputies acted appropriately.

For January, February, and March 2017, we received lists containing all incidents involving MCSO arrests and criminal citations. For each month, we requested a random sampling of arrests and criminal citations. In total, we reviewed 73 incidents involving arrest and 78 incidents involving criminal citations. We also reviewed a random sample of 245 Incident Reports for this reporting period. We found no evidence of enforcement of immigration-related laws.

Based on our review of the above incidents and the documentation provided by MCSO, the actions of deputies at each scene appear to be consistent with acceptable law enforcement practices. There was no indication that race or ethnicity was a factor in determining any law enforcement action that MCSO personnel took in any of these investigations.

***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.*

**Phase 1:** In compliance

MCSO asserts that it does not have an agency LEAR policy, and our review of agency policies confirms that assertion.

**Phase 2:** In compliance

**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;*
- c. 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;*
- d. 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);*
- e. 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;*
- f. 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;*
- g. 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;*
- h. 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.*

**Phase 1:** In compliance

- CP-8 (Preventing Racial and other Bias-Based Policing), most recently amended on August 2, 2016.
- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EA-11 (Arrest Procedures), most recently amended on June 15, 2016.

**Phase 2:** In compliance

During the first quarter of 2017, MCSO did not report any instances of deputies having contact with ICE/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. In our reviews of Incident Reports, Arrest Reports, and traffic stops, we did not note any contacts with CBP, and we have not observed any evidence of any immigration-related arrests.

In our last report, we noted an incident that occurred on October 15, 2016, in which an individual was stopped for a traffic-related event. The individual did not speak English, and the deputy who made the stop requested Customs and Border Patrol to assist with the interpretation. The individual was subsequently turned over to CBP, detained, and eventually deported. The incident has been under investigation by the Professional Standards Bureau, but has not yet been concluded. Once the investigation has been finalized, we will report the findings.

***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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

MCSO continues to provide us, the Plaintiffs' attorneys, and the Plaintiff-Intervenors with drafts of its Order-related policies and procedures prior to publication, as required by the Order. We, the Plaintiffs' attorneys, and the Plaintiff-Intervenors 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, incorporating the feedback of the Plaintiffs' attorneys, Plaintiff-Intervenors, and the Monitoring Team, MCSO provides them to the Monitoring Team 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.

**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.*

**Phase 1:** In compliance

- GA-1 (Development of Written Orders), most recently amended on November 3, 2016.

**Phase 2:** In compliance

GA-1 indicates that Office personnel shall be notified of new policies and changes to existing policies via Briefing Boards and via a software program, E-Policy; and defines a Briefing Board as an "official publication produced by the Policy Section, which provides information regarding Office policy. 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. The information in a Briefing Board has the force and effect of policy." 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 will generally not grant Phase 1 compliance for an Order requirement until such time as the requirement is memorialized in a more formal policy.

During our April 2016 site visit, we received an overview and demonstration of the E-Policy System, a companion program to the computer-based training program, E-Learning, which MCSO has been using for years. MCSO first advised Office personnel of the launch of the E-

Policy program in Briefing Board 15-02, issued January 21, 2015. The Briefing Board states, “Effective immediately, E-Policy will be used by the Office to ensure employees, posse members, and reserve deputies have access to all Office policy [Critical (C), General (G), Detention (D), and Enforcement (E)], as well as updates to, and revisions of all Office policy. E-Policy will also be the mechanism in which the Office will be able to verify the receipt of policy by employees, Posse members, and reserve deputies, as well as an acknowledgement that the policy was reviewed and understood.” The Briefing Board further states, “In those cases involving Critical Policy and other select policies, the E-Policy requirement will also include the need to correctly answer questions regarding the revised policy.”

We have advised MCSO that in cases where formal training is required by the Order, the E-Policy questions – which test comprehension of a policy – cannot serve as a substitute for the training. During this reporting period, MCSO issued (or issued revisions of) nine Order-related policies, including: CP-2 (Code of Conduct); EA-5 (Enforcement Communications); GA-1 (Development of Written Orders); GB-2 (Command Responsibility); GC-12 (Hiring and Promotional Procedures); GC-16 (Employee Grievance Procedures); GH-5 (Early Identification System); GJ-24 (Community Relations and Youth Programs); and GJ-35 (Body-Worn Cameras).

Several additional General Orders are currently in development. During this reporting period, MCSO also issued several Briefing Boards and Administrative Broadcasts that touched on Order-related topics.

During our July 2016 site visit, we first learned that MCSO, as part of a Countywide initiative, intended to replace its E-Policy System with a new online software program, Cornerstone. According to Training Division personnel, Cornerstone would be more user-friendly and offer more features than E-Policy. At that time, MCSO personnel anticipated that the new software would be adopted by the end of August 2016. During subsequent communications and also, most recently, during our April 2017 site visit, we learned that County officials delayed the implementation of Cornerstone until at least May 2017. At the time of our site visit, training personnel were reviewing and testing the system. We continue to follow these developments closely, and look forward to discussing and receiving a demonstration of this new system’s features in our upcoming site visit.

In the meantime, as MCSO awaits the full adoption of Cornerstone, we will continue to review MCSO’s records in E-Policy for the training of relevant personnel on its published policies.

**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 procedure violations. The MCSO shall apply policies uniformly.*

**Phase 1:** Not in compliance

- CP-2 (Code of Conduct), most recently amended on January 6, 2017.
- CP-3 (Workplace Professionalism), most recently amended on December 15, 2016.
- CP-5 (Truthfulness), most recently amended on December 21, 2016.
- CP-11 (Anti-Retaliation), most recently amended on December 1, 2016.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not in compliance

Since we began reviewing internal investigations conducted by MCSO, we have reviewed more than 500 administrative investigations involving MCSO Patrol personnel. During our reviews, we have observed deficiencies in both the investigations and the associated documentation.

During each site visit, we meet with PSB personnel and provide them with information regarding the cases that we find to be deficient in structure, format, investigation, or reporting requirements. PSB developed and implemented the use of an investigative checklist and specific format for the completion of internal investigations. These protocols have resulted in improvement in the structure and procedural completeness of the investigations. All supervisors who conduct investigations have been trained in the use of these documents. Effective June 1, 2016, use of these investigative protocol documents is required for all administrative investigations.

While we have noted improvements in overall compliance, we are still reviewing cases that MCSO has not properly and thoroughly investigated. We continue to note concerns in our reviews, including: failure to conduct a timely investigation; failure to attempt to interview complainants in person; failure to audio- and video-record all interviews; failure to interview all parties, failure to make appropriate credibility determinations; failure to conduct a thorough investigation; and findings that are not supported by the investigation. We have also noted concerns with the Pre-Determination Hearings where findings have been changed, or discipline has been reduced, without adequate justification.

During our site visits, we have met with PSB personnel to discuss our concerns with the overall quality of administrative investigations, and have provided specific case examples from the Paragraph 32 submissions that illustrate our concerns. PSB personnel have been responsive to our concerns, and their investigations continue to demonstrate improvement in overall quality. In many cases, we now consider the investigations conducted by PSB to be excellent examples of complete and thorough investigations.

During our reviews, we continue to note concerns with those administrative investigations conducted by Districts and Enforcement Support. While some improvement has been noted in the format and structure of these investigations, we continue to observe problems with their overall quality. PSB continues to assign bureau personnel who review Division and District cases when they are received. Their reviews have resulted in numerous cases being sent back to Districts for corrections. We have reviewed numerous emails sent to District personnel regarding the cases they have completed. The emails authored by PSB personnel provide excellent feedback, guidance – and in some cases, direction – to make necessary corrections to the report, or conduct further investigation. These reviews by PSB personnel have resulted in many cases being at, or near, full compliance, when they are finalized. While we appreciate, and support these efforts by PSB, the bureau is dedicating significant personnel hours to ensuring that others in the organization are properly completing their job responsibilities.

During our site visits in October 2016, January 2017, and April 2017, we met with both PSB and District command staff, to discuss delinquent and deficient administrative investigations. We continue to stress the importance of properly completing internal investigations and emphasize that MCSO's internal investigations must improve for MCSO to achieve compliance with the related Paragraphs. We have provided specific examples of cases we have found to be deficient, as well as examples of cases we found to be thoroughly investigated and well-written.

During our meetings with District command staff over our past three site visits, the MCSO staff in attendance have been attentive and asked relevant questions. However, it continues to be clear from these discussions, that some of the MCSO command staff still do not believe that they, or their supervisory personnel, have yet received sufficient training in how to conduct a quality investigation and comply with the Orders. We have discussed the upcoming investigative training, and are hopeful that this training will provide supervisory personnel and command staff with some of the skills and guidance necessary to properly conduct and review administrative investigations.

During this reporting period, we reviewed 65 administrative IA cases involving 80 sworn, Posse, or reserve personnel that were submitted in compliance with the requirements of Paragraph 32. Sworn personnel with the rank of sergeant or higher completed all of the investigations. There were 181 potential policy violations included in the 65 cases. Forty-four of the investigations resulted from external complaints, and 21 were internally generated. Twenty-one of the cases were initiated prior to the Second Order, and 44 were initiated on or after July 20, 2016. All 65 cases reviewed were completed after July 20, 2016.

Of the 65 administrative cases reviewed, 19 resulted in sustained findings against one or more employees. In two of these sustained cases, the deputy was either deceased or had resigned at the time the case was concluded and no disciplinary findings were appropriate. The remaining 17 cases resulted in discipline for one or more employees. We concurred with all sustained findings, and concurred with the discipline imposed in 16 of the cases. The discipline included: one dismissal; one 40-hour suspension; four eight-hour suspensions; 11 Written reprimands; and four coaching sessions. In these cases, the PSB Commander identified the category and offense number, as well as the range of discipline.

In five of the 65 cases, all conducted by District supervisors, we disagree with the findings. In three of these cases, we believe a finding of sustained was supported and should have been made. In one, we were unable to concur with the finding, as the investigation did not provide adequate information to reach any finding, and in one, a finding of exonerated was reached when the investigation supported a finding of not sustained.

There was one case where we do not concur with the final disciplinary decision. In this case, the category and offense number called for an 8-16-hour suspension. The PSB Commander appropriately noted this information in the documentation provided to the appointing authority. This case was mitigated to a written reprimand after the PDH. While the appointing authority documented the reasons for his decision, we disagree that this decision to mitigate the discipline outside of the established range was justified based on the facts of the case and the employee's work history.

All 65 cases we reviewed were completed on or after July 20, 2016. Thirty-five of these investigations were not completed within the required 60 or 85 days required by MCSO policy and the requirements of the Second Order. PSB conducted 15 of these investigations; the remaining 20 were investigated at the District or Division level. Eleven of the investigations conducted by PSB contained the required requests for extension and subsequent approval by the PSB Commander. Yet 14 did not contain a request or an approval for an extension. We continue to note our concerns with the failure to complete investigations within the required timelines. We have emphasized to MCSO personnel during our site visits that if an investigation cannot be completed within the required time limits, an extension memorandum providing justification must be authored and approved when appropriate.

PSB investigated 19 of the administrative cases we reviewed for compliance with this Paragraph. While only six of the administrative cases were initiated on or after July 20, 2017, all were completed after July 20, 2016. We continue to find PSB investigations generally thorough and well-documented, and note PSB's additional attention to meeting compliance requirements during this reporting period. Of the 19 cases PSB investigated for compliance with this Paragraph, we found 15 to be in full compliance with the requirements of the Court. Four of the investigations were not completed within required timeframes and did not contain any request for, or approval of, an extension. Had these four cases contained the required extension documents, all 19 would have been in full compliance.

During our January 2017 site visit, we discussed case deficiencies with PSB personnel regarding compliance with this Paragraph. We reviewed a number of specific cases with them and noted the required elements in the Second Order that were consistently missing in their investigations and reports at that time. As evidenced by the quality of the investigations PSB completed during this reporting period, PSB has improved its investigations and supporting documentation. Again, during our April 2017 site visit, we discussed IA investigations with PSB and continued to reinforce compliance requirements. We are confident that PSB will continue to address any deficiencies or concerns that we bring forward. PSB is clearly ensuring that its investigations are properly and thoroughly investigated, and PSB is addressing the concerns with missing compliance requirements that we noted in previous reporting periods.

District or Enforcement Support Bureau personnel completed 46 of the administrative investigation cases we reviewed for this Paragraph. We continue to note our concerns with the quality of their investigations and findings, in addition to those cases that are not completed within the required timeframes. Of the 46 cases we reviewed, 38 were initiated after July 20, 2017. All 46 were completed after July 20, 2017. We had some concerns with 32 of the 46 investigations. Twenty cases were not completed within the required 60-day timeframe; and 14 did not include either a request for, or an approval of, an extension. In some cases, no attempt was made to interview the complainant in person, and many lacked the required audio- and video-recording of interviews.

In addition to procedural and documentation concerns, we noted more substantive issues with these investigations, including; failure to address all potential misconduct; leading interview questions; unsupported findings, and investigations that were not thorough and complete. The Plaintiffs' attorneys also noted concerns with two investigations completed at the District level, and we share many of the concerns they brought forward. We disagreed with the findings in five of the cases completed by District or Division personnel. Many of the cases completed at the District or Division level required correction, guidance, or additional investigation directed by PSB.

Our review of cases submitted for compliance with this Paragraph indicate a continuing effort on behalf of PSB staff to both complete proper investigations, and assist District personnel in completing their internal investigations. While PSB investigators are generally completing proper investigations related to compliance with this Paragraph, and we are confident they will continue to do so, we do not have this same confidence for those cases completed at the District level. PSB can only provide so much assistance and guidance. As it relates to some areas of compliance, the damage is already done, prior to PSB's review of the investigations. Leading questions cannot be withdrawn. Failures to conduct proper interviews, contact complainants in person, and audio- and video-record interviews cannot be restored. We remain hopeful that the upcoming investigation training will address some of the issues we continue to observe in these investigations.

**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:** Not in compliance

- CP-8 (Preventing Racial and other Bias-Based Policing), most recently amended on August 2, 2016.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.

**Phase 2:** In compliance

We previously reviewed 32 administrative investigations relevant to compliance with this Paragraph. We disagreed with the findings in six cases, and the final discipline in two cases; and found the overall quality of the investigation to be lacking in two cases. We continue to discuss our concerns regarding these investigations with PSB personnel during our site visits.

During this reporting period, MCSO completed and submitted two internal administrative investigations in compliance with this Paragraph. One was investigated by PSB, and the other was investigated by a captain assigned to the Major Crimes Division. The investigations that we reviewed for compliance with this Paragraph do not include biased policing complaints involving the Plaintiffs' class. Those investigations have additional compliance requirements and are discussed in Paragraphs 275-283.

One of the two cases submitted for this reporting period involved a third-party complaint made during a community meeting in 2016. PSB conducted extensive research and follow-up to identify any parties or deputies who may have been involved. PSB's research determined that no incident as described had occurred. The investigation was thorough and complete.

In the second case, an allegation was made involving the conduct of a sworn member of MCSO. The investigation was conducted by a captain in the employee's chain of command. While the investigation listed CP-8 (Preventing Racial and other Bias-Based Policing) as a potential policy violation, the conduct, even if it had occurred, would not have been an act of bias as defined within MCSO policy. The investigation was thorough and well-documented.

Both cases submitted for compliance for this Paragraph for this reporting period were initiated and completed after July 20, 2016. Both were external complaints and resulted in findings of unfounded. We concur with the findings, and find both cases to be in compliance with both Orders.

During our next site visit, we will reinforce the requirements for ongoing compliance with this Paragraph.

We reviewed four additional cases this reporting period that involved biased policing allegations. All of these cases were closed after July 20, 2016; involved members of the Plaintiffs' class; and were determined to be CRMs (Class Remedial Matters). They will be reported in the Paragraphs related to CRMs later in this report.

**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.*

**Phase 1:** In compliance

- GA-1 (Development of Written Orders), most recently amended on November 3, 2016.

**Phase 2:** In compliance

MCSO policy GA-1 states, “The Policy Section shall conduct an annual policy review of all Critical Policies, as well as the specific policies related to relevant court orders or judgments. The purpose of this annual review is to ensure that the policies provide effective direction to Office personnel and remain consistent with any court order or judgment, current law, and professional standards. The annual review shall be documented in writing.”

Since the first several months of our tenure, MCSO has been reviewing its policies in response to Order requirements and our document requests. Many of the policies have been adjusted based on our feedback and that of the Plaintiffs’ attorneys and Plaintiff-Intervenors. Several have been issued to sworn personnel and Posse members in conjunction with the ongoing Fourth and Fourteenth Amendment Training.

As noted previously, we established a schedule for the annual reviews required by the Order during our December 2014 site visit. We agreed that the cycle for this review requirement would be MCSO’s fiscal year, which runs from July 1-June 30.

MCSO submitted its second annual policy review, a section of its 2016 Annual Compliance Report, on September 15, 2016. The report covers the period of July 1, 2015-June 30, 2016. It also briefly describes MCSO’s four-step process for the review and revision of policies; and lists the Order-related policies, Briefing Boards, and Administrative Broadcasts issued during that time period.

During our April 2016 site visit, we requested from MCSO written confirmation that a process has been established in which the MCSO component who has primary responsibility for the content of a policy is afforded one final review of the policy to ensure that MCSO does not remove critical (or Order-compliant) content prior to sending it to the Monitor and Parties or publication. In response to our request, MCSO noted that the Compliance Division would revise its Operations Manual with this advisement. The new language states, “Once the approval is received from the Office component primarily responsible for the content of the policy, no further changes or removal of the policy content is permitted prior to sending the policy to the Monitor/Parties, HR Bureau Chief, Chief Deputy, or for publication.”

## 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.*

**Phase 1:** In compliance

- Special Investigations Division Operations Manual, published May 15, 2015.
- Special Investigations Division Organizational Chart, published February 15, 2015.
- Memorandum from Executive Chief Trombi to Deputy Chief Lopez directing the elimination of the Criminal Employment Unit, dated January 6, 2015.

**Phase 2:** In compliance

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

During our review of the arrests made by the Special Investigations Division ATU since March 2015, we have not seen 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.

During this reporting period, MCSO reported that it did not engage in any investigations of human smuggling and did not make any arrests for immigration or other human smuggling violations. We reviewed department reports and other documents authored and submitted by the ATU during this reporting period, and found them to be primarily focused on narcotics activity. This has been our consistent observation of the focus of this unit. During our April site visit, MCSO advised us that the Anti-Trafficking Unit had been renamed the Fugitive Apprehension Investigative Team (FAIT). We reviewed a copy of the updated Special Investigations Division's Operations Manual, and the mission and objectives of FAIT are in compliance with this Paragraph.

**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.*

**Phase 1:** In compliance

- GJ-33 (Significant Operations), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In 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. “Operation Borderline” was conducted from October 20-27, 2014, to interdict the flow of illegal narcotics into Maricopa County. MCSO met all the requirements of this Paragraph during this 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 provided by MCSO, 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 showed that this operation was conducted from October 17-23, 2016. The documentation provided by MCSO 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 noted, as did the Plaintiffs, that “Operation Gila Monster” involved traffic stops of Latinos, and that those arrested were undocumented Latinos. We will continue to closely monitor and review any operations we become aware of to ensure continued compliance with this and other Paragraphs related to significant operations.

For this reporting period, we reviewed all documentation submitted by MCSO in response to this Paragraph requirement. Reports from each District and the Investigations Division document that no significant operations were conducted by MCSO during this reporting period. We did not become aware of any potential significant operation through media releases or other sources.

*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.*

**Phase 1:** In compliance

- GJ-33 (Significant Operations), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In compliance

Since September 2014, we have reviewed all the documentation submitted by MCSO regarding the only significant operation MCSO has reported conducting. This operation, conducted from October 20-27, 2014, was intended to interdict the flow of illegal narcotics into Maricopa County and fully complied with the requirements of this Paragraph. MCSO has not conducted any operations that invoke the requirements of this Paragraph since October 2014.

**(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~~ 10 days after the operation:*

- 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);*
- information that triggered the operation and/or selection of the particular site for the operation;*
- documentation of the steps taken to corroborate any information or intelligence received from non-law enforcement personnel;*
- documentation of command staff review and approval of the operation and operations plans;*
- a listing of specific operational objectives for the patrol;*
- documentation of specific operational objectives and instructions as communicated to participating MCSO Personnel;*
- 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.*

**Phase 1:** In compliance

- GJ-33 (Significant Operations), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In compliance

Since the publication of GJ-33, MCSO has reported conducting 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.

During this reporting period, MCSO again reported that it did not conduct any significant operations invoking the requirements of this Paragraph.

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

***Paragraph 39.*** *The MCSO Monitor shall hold a community outreach meeting no more than 30 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 Monitor shall communicate the operational details provided to it by the MCSO and shall hear any complaints or concerns raised by community members. The Monitor may investigate and respond to those concerns. The community outreach meeting shall be advertised and conducted in English and Spanish.*

The Court has amended the original Order to move responsibility for Community Outreach to the Monitor. This section no longer applies to the activities of MCSO.

During the current reporting period, MCSO did not conduct any significant operations, and it was not necessary for us to conduct any community outreach meetings related to this Paragraph.

**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.*

**Phase 1:** In compliance

- GJ-33 (Significant Operations), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In compliance

Since MCSO developed GJ-33 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 brought forward 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 its November 2015 submission and continues to do so.

MCSO has continued to report that the Office has not conducted any operations that meet the reporting requirements for this Paragraph since October 2014.

## 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:** Not in compliance

- GG-1 (Peace Officer Training Administration), under revision at the close of the reporting period .
- GG-2 (Detention/Civilian Training Administration), under revision at the close of the reporting period .
- Training Division Operations Manual, currently under revision.

#### **Phase 2:** Deferred

During this reporting period, 17 individuals were proposed as instructors and seven individuals were proposed as non-instructor assistants for the Employee Performance Appraisal (EPA) Training. This was the first request by the Training Division to provide non-instructor assistants as a means to increase student oversight and increase the ability of instructors to assist students while working at a computer terminal. We commend the Training Division's initiative. To determine compliance with this Paragraph, we reviewed the instructor files submitted for these individuals, which contained curricula vitae and PSB checks. Based upon our review, the individuals appear to be competent, with experience and expertise in the area of EPAs. We note that although GG-1 was not published during this reporting period, the Training Division adhered to the policy's criteria established for instructor selection.

The Training Division did not conduct annual PSB reviews of incumbent instructors or of active FTOs during this reporting period. We will continue to conduct reviews of instructor and FTO files for content and consistency with the requirements of GG-1.

**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.*

**Phase 1:** Not in compliance

- GG-1 (Peace Officer Training Administration), under revision at the close of the reporting period.
- GG-2 (Detention/Civilian Training Administration), under revision at the close of the reporting period.
- Training Division Operations Manual, currently under revision.

**Phase 2:** Deferred

We verify compliance with this Paragraph by reviewing all completed tests, documentation of all failures, and all failure remediation efforts for each class delivered during each reporting period.

During this reporting period, MCSO delivered two classes of the Detention, Arrests, and Immigration Related Laws; and Bias Free Policing Trainings. A total of 32 (eight sworn, 24 Posse recruits) attended the classes. All eight sworn and 23 Posse recruit personnel successfully completed testing. One Posse recruit failed initial testing and did not take the remedial test.

MCSO delivered a single class of the Annual Combined Training (ACT) during this reporting period. Two sworn personnel received the training; both successfully completed testing.

MCSO also delivered the newly approved Employee Performance Appraisal (EPA) Training during this reporting period. The Training Division conducted a Train-the-Trainer session for 20 combined instructors and non-instructor assistants, all of whom successfully completed testing. The Training Division delivered an additional five classes, for a total of 97 students (37 sworn, 41 Detention, 19 civilian). Three individuals required remedial testing and were successful. During the Train-the-Trainer session, instructors identified a concern with the language of two test questions. After discussion, the questions were modified and administered without further issues. These actions demonstrate a heightened awareness of the test development step of the Training Cycle by the Training Division and the importance of Train-the-Trainer sessions.

The Training Division also delivered three EIS-related “Blue Team Entry System for IAPro” Trainings during this reporting period. These classes were delivered to Detention personnel; however, three sworn personnel also attended and successfully completed the training.

During this period, no classes were delivered for the Supervisor Responsibilities: Effective Law Enforcement (SRELE) Training, TraCS Training, Body-Worn Camera Training, and Administrative Investigations Checklist Training.

**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.*

**Phase 1:** Not in compliance

- GG-1 (Peace Officer Training Administration), under revision at the close of the reporting period.
- GG-2 (Detention/Civilian Training Administration), under revision at the close of the reporting period.
- Training Division Operations Manual, currently under revision.

**Phase 2:** Deferred

We verify compliance for this Paragraph by reviewing the Master Training Calendar. The provided calendar covered the period of April 3, 2017-April 8, 2018. The calendar contained several projected dates for Order-related training, which indicates that the Training Division is using the Master Training Calendar to better manage class scheduling, instructor assignments, and fiscal concerns related to training hours.

We also reviewed master personnel rosters to determine the number of personnel required to receive Order-related training. We determined that 731 sworn members, 29 reserve members, 31 retired reserve members, and 718 Posse personnel would require Order-related training. These categories vary by reporting period, as a result of the attrition of the organization.

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

**Phase 1:** Not applicable

**Phase 2:** In compliance

We continue to actively review and provide recommendations for all newly developed lesson plans, and all lesson plans under revision.

The EPA curriculum was approved for delivery during this reporting period. We provided technical assistance for this lesson plan during March. During the provision of technical assistance, we ensured that MCSO incorporated all of the recommendations made by the Monitoring Team and the Parties. This allowed for the final approval for the lesson plan and supporting documents. We then assisted the Training Division with delivery of the Train-the-Trainer session.

During our March technical assistance site visit, we provided the EIU with our and the Parties' recommendations to the EIS policy and the EIS training curriculum. During our April site visit, we discussed the EIS curriculum and timeline. The final EIS lesson plan was scheduled for delivery within 30 days of publishing policy GH-5 (Early Identification System). MCSO published this policy on March 24, 2017. During our April site visit meeting, the EIU formally requested – and we approved – a two-week extension, prompting the review period for the lesson plan to begin on May 8, 2017. On May 15, 2017, we conducted a follow-up conference call that was very productive. During this call, we agreed upon several key concepts. The Training Division will coordinate content between the EIS training and the SRELE training curricula; the EIS training will be designed to provide baseline requirements for supervisors. SRELE training will include advanced analysis, interpretation, and review techniques in support of the EIS curriculum. The EIS and SRELE training is projected to be delivered jointly in a two-day format. We continue to recommend that the EIU and the Training Division identify additional personnel capable of assisting in the delivery of this curriculum.

During our April site visit, MCSO advised us that the SILO Tips Database curriculum was withdrawn from further consideration. This change resulted from technical concerns with the Praxis database. The SILO Unit has been researching alternatives. They have identified Tip Soft as a possible alternative. They appropriately believe that this will require a new lesson plan to be developed. The previously submitted SILO Tips Database curriculum was not approved during this reporting period.

Both the Body-Worn Camera and the TraCS curriculum remain under development and review. During our April site visit, we and the Parties discussed the inclusion of specific content to correct deputy data input errors, and to address incomplete or inaccurate supervisory reviews of the TraCS data for issues such post-stop ethnicity. These recommendations derive from deficiencies identified during the reviews of BWC recordings and Supervisory Notes for traffic stops.

As we create specific content on the Internal Investigation Training curriculum, PSB reviews the material and returns it to us with comments and recommendations. It is important for PSB to coordinate its efforts with the Training Division to ensure that once the discipline policies are published, this training can be finalized and approved for delivery as required by the Second Order.

**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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

The Training Division is increasingly demonstrating comfort with – and expertise on – the concepts of the training cycle memorialized in GG-1. The division now routinely incorporates Train-the-Trainer sessions for classes requiring multiple instructors. These sessions have demonstrated their value on several occasions. Most recently, during this reporting period, the EPA Train-the-Trainer identified test question ambiguity and minor lesson plan inconsistencies. By using these sessions, the Training Division was able to correct these potential problems prior to publishing lesson plans.

**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.*

**Phase 1:** Not in compliance

- GG-1 (Peace Officer Training Administration), under revision at the close of the reporting period.
- GG-2 (Detention/Civilian Training Administration), under revision at the close of the reporting period.
- Training Division Operations Manual, currently under revision.

**Phase 2:** Deferred

During our April site visit, MCSO provided an update on the implementation of Cornerstone, the Maricopa County online learning management software (LMS). Once operational, this system is intended to replace the current E-Policy system. MCSO personnel showed a short video highlighting how the system works. Implementation has been plagued by delay and is now anticipated for July 2017. The delayed implementation can be partially attributed to the fiscal impact of annual licensing requirements. Per MCSO, there will be two phases of implementation. The first phase, scheduled for July 2017, is expected to address course content and evaluation. The second phase, scheduled for September 2017, will address advanced test and evaluation analysis requirements. MCSO intends to scan existing individual deputies' Skills Manager records and migrate them into Cornerstone.

The EPA lesson plan was approved during this reporting period, and MCSO delivered EPA classes. During our April site visit, while conducting District visits, District personnel expressed that this training curriculum was significantly more detailed than any previous training delivered. They informed us that they believe it will result in more comprehensive supervisory notes captured in the EIS.

The TraCS and Body-Worn Camera lesson plans remain under revision by the Training Division.

The EIS lesson plan has been submitted for an initial review. On May 15, 2017, we conducted a joint conference call to provide the EIU with direct comments and recommendations to aid in a timely revision to the curriculum. We anticipate the production of this curriculum to be consistent with the EIS Project Plan timeline.

The SILO Tips Database Training has been withdrawn by MCSO, and will be resubmitted after the search for a new database has been completed.

We continue to work with MCSO to develop Internal Investigation Training. This training curriculum was not approved during this reporting period.

MCSO can reasonably expect that members of the Monitoring Team shall observe training sessions for the purposes of rendering assessments to the Parties and the Court.

## **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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

MCSO delivered Bias-Free Policing training twice during this reporting period. A total of 32 personnel (eight sworn, 24 Posse recruits) attended the class.

One class of the Annual Combined Training (ACT) was delivered during this reporting period. This lesson plan comports with the requirements of this Paragraph. Two sworn personnel received the training.

**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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

During this reporting period, the Training Division began updating the ACT curriculum. We advised the Training Division that the requirements of Paragraphs 49 (p) and 51 (m), which address misconduct investigations and discipline, need not be covered in both the ACT curriculum and the Internal Investigation Training curriculum required by the Second Order. Addressing them in one curriculum or the other is sufficient.

***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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

During this reporting period, two classes of the Detentions, Arrests, and the Enforcement of Immigration-Related Laws training were delivered. A total of 32 (eight sworn, 24 Posse recruits) attended the class.

One class of the Annual Combined Training (ACT) was delivered during this reporting period. This lesson plan comports with the requirements of this Paragraph. Two sworn personnel received the training.

**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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

The update and revision of the ACT began during this reporting period. This lesson plan has not been presented for review.

#### **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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

The Supervisor Responsibilities: Effective Law Enforcement (SRELE) training was not delivered during this reporting period. Development for the 2017 lesson plan has begun and is to include supporting components to the EIS Lesson Plan.

**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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

The Supervisor Responsibilities: Effective Law Enforcement (SRELE) training currently in development will include expanded language specific to 53.e., which is intended to support the EIS Lesson Plan.

## 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 about 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 time 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 six Districts (Districts 1, 2, 3, 4, 6, and 7) and Lake Patrol. By way of background, MCSO reported a total of 5,562 cases of traffic stop events for these areas between October 1-December 31, 2016 (averaging 1,854 per month).

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 Paragraph (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

- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EA-5 (Enforcement Communications), most recently amended on December 8, 2016.
- EA-11 (Arrest Procedures), most recently amended on June 5, 2016.
- CP-8 (Preventing Racial and other Bias-Based Policing), most recently amended on August 2, 2016.
- GJ-3 (Search and Seizure), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**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 MCSO deputies from January 1-March 31, 2017, 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.

Paragraph 54.a. requires MCSO to document the name, badge/serial number, and unit of each deputy and Posse member involved. Our review indicated that in the 105 vehicle traffic stops, there were 33 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. Of the 33 cases where there were multiple units on a stop, we found two cases where personnel who were on the scene were not listed in the VSCFs. In one case involving a stop of a Latino male for not having functional taillights, a transport unit shows in CAD but was not listed in the VSCF. In one case, a white male driver was stopped for running a stop sign. A second unit shows on the scene in the BWC, but was not documented in the VSCF.

For this reporting period, all of the primary deputies indicated their own serial numbers for every stop they initiated. We review the Vehicle Stop Contact Form, I/Viewer Event document, the Justice Web Interface, and the CAD printout to determine which units are 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. As in the second example listed above, if the arriving unit announced his presence the documentation of additional unit(s) would be captured. A TraCS change was made 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.

The identity of personnel on scenes is a core issue in this case, and we shall consistently evaluate the agency's measure of compliance with this requirement. The Order requires that all deputies on the scene be identified with their names, and serial and unit numbers, on the appropriate forms. We found that the deputies' names, and serial and unit numbers, were listed, with few exceptions, on all required forms and identified on the Vehicle Stop Contact Form. There were 33 instances where traffic stops involved deputies or Posse members, in addition to the primary units conducting the stop. Of those, 31 stops had Vehicle Stop Contact Forms that identified all personnel present. MCSO's compliance rate for this reporting period is 94%.

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. During our quarterly site visits, we review the GPS coordinates with CID personnel to ensure the accuracy of the data. 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 about 76% of the cases. In a separate spreadsheet, MCSO provided GPS coordinates for 103 of the 105 cases we reviewed, for 98% compliance with this portion of the Subparagraph.

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 found no instances where the start or end time on the Vehicle Stop Contact Form differed by five minutes or more from the CAD printout. In monthly audits of traffic stop data, BIO reviews the beginning/ending times of the stops and sends Action Forms to 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.

During our April 2016 site visit, we discussed with ASU and 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, a decision was made 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. Eleven additional TraCS technical changes were made and implemented in 2016. The most significant are highlighted below:

- Contact start time will be populated on the VSCF by CAD;
- Added a new field (Classification) that requires the deputy to select an ARS Offense Classification (Civil Traffic, Criminal Traffic, Criminal or Petty Offense);
- Previously, once a supervisor had reviewed the VSCF, the form could not be modified. The change now allows the supervisor who reviewed the form to “REJECT” it and request that appropriate changes be made after the supervisor’s initial review;
- Replaced the Yes/No selection with a series of five questions that define the reason for an extended stop;
- Corrected the rule so the deputy’s serial number is defaulted correctly;
- Added custom search features for citations and warnings so the deputy is able to search fields by driver; and
- Added help fields for the deputy to navigate the TraCS system.

The first change listed above should ensure that the start and end time of the stop from the CAD system and VSCF should be consistent. MCSO’s compliance rate is 98% for this portion of the Subparagraph.

Paragraph 54.c. requires MCSO to document the license plate and state of the subject vehicle. During this reporting period, we found that deputies properly recorded the vehicle tag number and state of issuance in 101 cases. There were four cases where the deputy either announced an incorrect tag number or ran a tag check that differed from the tag documented on the VSCF and citation. Three of these four cases had justifiable explanations, and none of the four cases involved Latino drivers.

- In the first case, the deputy stopped an ATV (All Terrain Vehicle) with a license plate that had been switched. The tag documented in CAD did not belong on the vehicle, so the vehicle's registered tag was noted on the VSCF and citation.
- The second case involved a juvenile driver who was driving a vehicle that was registered to his father's company. The vehicle had a tag that was assigned to a different vehicle from the company. The correct license plate was noted on the citation.
- The third case involved a vehicle with an expired license plate. The tag did not belong on the vehicle. The vehicle was not registered; as a result, there was no license plate listed in the VSCF and citation.
- The fourth case involved a vehicle whose driver was stopped for driving with a revoked driver's license. The correct tag was noted on the CAD report and in the citation, but was off by one number in the VSCF. This was an actual entry error.

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

Paragraph 54.d. requires MCSO to document the total number of occupants in the vehicle when a stop is conducted. In 26 of the 105 traffic stops, the driver had one or more passengers in the vehicle (57 total passengers). The Vehicle Stop Contact Form, 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. Policy EB-2 (Traffic Stop Data Collection) requires deputies to collect data on all traffic stops using the MCSO VSCF; this includes incidental contacts with motorists. Our review of the sample data indicates that deputies identified the correct number of vehicle occupants in all cases. MCSO is 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 26 of the 105 stops from the traffic stop data sample, there was more than one occupant in the vehicle (57 total passengers).

Our previous reviews of passenger contacts, drawn from the sample of 105 traffic stops, did not provide a sufficient number of cases where deputies made contact with passengers. Therefore, we requested that MCSO provide us, from the TraCS data, all cases where deputies made contact with passengers. We then pulled a sample of 10 cases per month (30 per quarter) of those stops where deputies made contact with a passenger. (The cases of passenger contacts are detailed in Paragraph 25.d.)

In one stop in our sample of 105 that contained body-worn camera recordings, our review found a female driver with a Latina first name and maiden name, documented as white, who should have been documented as Latina on the VSCF. In another case, an Indian/Asian driver was noted as white on the VSCF. BIO flagged both of the two stops for misidentification of the ethnicity of the driver. Both drivers were issued citations. During this reporting period, we also noted three drivers from the sample used for Paragraph 54.k. who appeared to be white, but were listed as Latino.

Sixty-six, or 63%, of the 105 traffic stops involved white drivers. Twenty-nine, or 28%, of the 105 stops involved Latino drivers. Seven, or 6%, of the 105 traffic stops involved Black drivers. Three, or 3%, of the 105 traffic stops involved Indian or Asian drivers. Sixty-five traffic stops, or 62%, resulted in citations. Thirty-seven, or 35%, of the 105 traffic stops we reviewed resulted in a written warning. There were two traffic events that resulted in no action due to non-contact with the driver. One involved a fleeing driver who was never apprehended. The other occurred when the deputy was reassigned to a priority call before the vehicle was stopped. In one traffic-related event, a deputy stopped an undercover officer on official duty and generated an Incidental Contact Form. The breakdown of those motorists issued warnings is as follows: 24 white drivers (65% of the total who were issued warnings); 12 Latino drivers (32% of the drivers who were issued warnings); and one Black driver (3% of the drivers who were issued warnings). There was one Indian/Asian driver stopped, but mistakenly marked as White on the VSCF. This driver received a citation. In our previous report, white male drivers had the lowest percentage of receiving warnings compared to other drivers who were stopped. This reporting period shows that 65% of the drivers who received warnings were white, 32% of the drivers who received warnings were Latino, and 3% of the drivers who received warnings were Black.

The Order requires MCSO deputies to document the perceived race, ethnicity, and gender of any passengers whether contact is made with them or not. MCSO has been aware via BIO's audits of the deputies' failure to indicate the race/ethnicity of passengers when no contact is made with them. The Order does not require the names of passengers unless a passenger is contacted. Then the reason for the contact must be documented. In those instances where contact is made, the passenger's name should be listed on the Vehicle Stop Contact Form.

There were a total of 162 occupants (105 drivers and 57 passengers), with one passenger not identified by race, ethnicity, or gender. MCSO had been compliant with this Subparagraph in past reviews. For this reporting period, we defer our compliance assessment due to numerous Vehicle Stop Contact Forms we reviewed that indicate the underreporting of Latino drivers. We requested additional body-worn camera recordings from this reporting period based on our preliminary findings. MCSO must address the issue of possible underreporting of Latino drivers by providing additional training for deputies and supervisors. MCSO needs to identify the method of training and a set timetable for its completion. In our last quarterly status report, we recommended that MCSO have the training methodology and timetable completed and disseminated to the Monitor and Parties by July 1, 2017.

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). For this reporting period, we found that in the 105 traffic stops we reviewed, all stops included a check on the license plate. There were 100 stops where the driver or passengers had a warrant check run.

MCSO's compliance rate is 95%, and is 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. Due to the low number of cases where contact is made with passengers in our sample of 105 traffic stop cases per quarter, we pulled an additional sample for those cases involving passenger contacts. For this reporting period, we reviewed 30 traffic stops where the deputy had interaction with one or more passengers. Each passenger contact is described in detail in Paragraph 25d. All passenger contacts in the traffic stops we reviewed for Paragraph 25.d were noted in the VSCFs.

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 the deputies' notes on the VSCF, the Arizona Citation, and the CAD printout for any information involving the passengers. We reviewed MCSO's I/Viewer System and the Justice Web Interface (JWI) to verify if a record check was requested for the driver or any passengers.

In our experience, the vast majority of traffic stops do not require contact with a passenger unless the driver is arrested, the vehicle will be towed, or there are minor children in the vehicle that will need care. The other type of traffic stop where we noted that deputies routinely contact passengers is when upon approaching a vehicle, the deputy detects the smell of burnt marijuana. In the stops we reviewed where this has occurred, deputies have inquired if the driver or any passengers possess a medical marijuana card.

MCSO is 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 cases from the 35 cases we initially requested each month, and requested CAD audio and body-worn camera (BWC) footage for those cases. We listened to 31 CAD dispatch audio recordings, and reviewed 31 body-worn camera recordings 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 the 31 stops.

For those samples where CAD audiotapes have not been requested, we review the CAD printout and the VSCF to ensure 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.

We reviewed one stop where there were inconsistencies in the announced violation in CAD and the reason that the deputy gave the driver for the stop. According to the CAD recording, the CAD printout, and the written warning, the violation was failure to stop for a red light. The VSCF stated that the driver failed to stop at a stop sign. In the BWC recording, however, the deputy told the driver that the reason for the stop was that he had made a right turn and failed to stop at the stop sign. MCSO's compliance rating for this Subparagraph is 99%.

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, the CAD printouts, the Vehicle Stop Contact Forms created by MCSO along with the E-Ticketing system and the Arizona Ticket and Complaint form capture the information required. 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 reported on those instances where there were five minutes or more in difference from either the initial stop time or end time.

We did not find any traffic-related events where the stop or end time of the stop differed by more than five minutes between the Vehicle Stop Contact Form and the CAD printout. Some stops vary in time for any number of reasons that may, or may not, be justified. There were 16 extended stops. Nine extended stops involved Latino drivers, five extended stops involved white drivers, and two extended stops involved Black drivers. For this quarter, the ratio of Latino drivers who were subject to extended stops was almost double that of white drivers. We reviewed each stop, and found that all of the 16 stops had reasonable justification for the additional time expended. One extended stop involved a Latino male that was suspected of driving while impaired. The traffic stop documentation contained inconsistencies as to the reason for the stop, but the deputy and the supervisor on the scene acted professionally and the driver was released with a warning. This stop is described in detail in Paragraph 25.g.

Supervisors conducted timely reviews and discussions of 104 of the 105 VSCFs reviewed. In one stop, the deputy was directed to break off for a priority call, and no VSCF was generated. Deputies accurately entered beginning and ending times of traffic stops in all of the cases that we reviewed. MCSO accurately entered the time citations were issued in all 65 cases.

MCSO is 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 is in compliance with this Subparagraph.

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. There were four cases in our traffic stop sample of 105 that indicated a search, so we pulled an additional 33 sample cases from the quarter involving only instances where the deputy indicated a search on the VSCF. In our review of the 37 cases where deputies documented a person's search, we noted four searches that were for probable cause due to a strong smell of marijuana in the vehicle. In 27 cases, the searches were valid and incident to an arrest. One incident involved a traffic stop where one of the passengers had a firearm and consented to an NCIC check on the weapon. The remaining five cases appear to be vehicle inventories conducted by the deputy when the vehicle is being towed and the violator is released. Our review of the video-recordings verified the vehicle inventories.

We noted one event where the driver was stopped for speeding. Upon approaching the driver, the deputy stated that he detected a strong odor of burning marijuana. The deputy contacted another deputy and inquired whether he had sufficient probable cause for a search based on the smell of marijuana. The deputy who conducted the stop was advised that he had sufficient probable cause for a search, but to request consent from the driver. The deputy asked the driver for consent to search the vehicle, but the driver declined. The deputy conducted the search and found no illegal substances. In another vehicle search, two Black males were stopped for an equipment violation. A criminal history check revealed that both had felony warrants. The BWC recording submitted for this stop began when the vehicle was already stopped. The recording did not indicate the beginning of the stop, or the conclusion of the stop, which ended in the arrest of the driver and passenger.

We reviewed several VSCFs that marked passengers as having been searched incident to arrest, when our reviews of the BWC recordings have indicated that passengers were neither arrested nor searched. In most instances, this error occurred in stops where the driver was arrested and/or where there was an inventory search conducted on a vehicle to be towed. We continue to note this confusion among deputies in accurately documenting which types of searches they are conducting. We also continue to find deputies indicating incident to arrest or probable cause searches when the search is a vehicle inventory if the vehicle is being towed. The VSCFs for these stops had been reviewed and approved by supervisors. There is an apparent misunderstanding by both deputies and supervisors on how to correctly complete this portion of

the VSCF and what constitutes a passenger search. We recommend that MCSO address this issue through training on proper documentation of vehicle and persons' searches. Supervisors should also be attentive to these deficiencies we have identified when reviewing traffic stop documentation.

Policy GJ-3 is very specific; it states that a warrantless search of a vehicle may be conducted when there is probable cause to believe that evidence or contraband is inside the vehicle. The policy requires that when a person consents to a vehicle search, the deputy should make a request for his/her signature on the form, thereby waiving his/her rights. We have not seen any Consent to Search Forms in the samples we reviewed. We 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 unless the search is an actual search incident to arrest.

This Paragraph only applies to persons' searches and not vehicle inventories. MCSO has been aware of the problem with the reporting of persons' searches, and EIU is working on a solution to resolve the problem. Beginning with our November 2016 sample, we observed that MCSO changed the VSCF to indicate if the stop resulted in a vehicle being towed – but it did not address the issue of the difference between vehicle inventories and persons' searches. MCSO did not provide a sufficient number of persons' search cases for our review to determine if they were compliant with this Subparagraph. Several of the cases produced were vehicle inventories and mislabeled by the deputies. From our continued reviews, MCSO is still over-reporting the number of actual persons' searches. MCSO is not in compliance with this Subparagraph.

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. During our review of the collected traffic stop data (our sample of 105) during this reporting period, we noted three cases where deputies made a criminal traffic arrest and seized the offending driver's license or license plate and placed it in evidence. Two of the cases involved white males, and one case involved a white female. Deputies indicated in all cases on the Arizona Traffic Ticket and Complaint when they seized a driver's license or license plate.

In the 37 cases we reviewed for persons' searches, 10 involved narcotics or paraphernalia-related arrests. The narcotics arrests involved a white female, three Black males, three Latinos, and three white males. In the narcotics cases, the deputies documented the seizures on the VSCFs. MCSO is in compliance with this Subparagraph.

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 of the 105 cases we reviewed, we found documentation indicating the final disposition of the stop, whether an arrest was made, a citation issued, a warning was given, or a release was made without a citation. MCSO is in compliance with this Subparagraph,

**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.*

**Phase 1:** In compliance

- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EA-5 (Enforcement Communications), most recently amended on December 8, 2016.

**Phase 2:** In compliance

To verify compliance for this Paragraph, we reviewed a sample of the Vehicle Stop Contact Forms, the CAD printouts, the I/Viewer, the citation, warning form, 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. We inquired how the CAD printout is coded if a deputy is dispatched as a back-up but is then cancelled prior to arrival. These situations occur occasionally, and for our assessment of numbers of personnel on the scenes of traffic stops, we requested clarification.

We visited Districts 1, 3, and 7 during our April 2017 site visit; and there were no indications from any personnel that there were recurring issues with the unique identifier, including duplicates. Once the deputy scans the motorist’s driver 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. MCSO is in compliance with this Subparagraph.

**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:** Not in compliance

- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EIU Operations Manual, currently under revision.

**Phase 2:** Not in compliance

To verify compliance for this Paragraph, we reviewed the monthly audits of the traffic stop data conducted by BIO on the samples we selected. While audits require in-depth analysis, quality control checks serve as more of an inspection or spot-check of the data. We also reviewed the BIO traffic stop audits for the months of January-March 2017 and found that the audits were thorough and captured the majority of deficiencies. During our review of the identical dataset we identified additional deficiencies, and brought them to the attention of CID while onsite; and they are contained in this report.

During a conference call with MCSO on May 12, 2017, we reviewed MCSO's audit process that is included in EB-2 to determine whether its monthly audits of traffic stop samples involved validating the sources and definitions of data that are used in MCSO's periodic analyses, as prescribed by Paragraphs 64-67 below. MCSO reported that its monthly inspections verify what is reported in TraCS, but that its quality assurance process is limited to the verification of information for each traffic stop in the sample and does not include validation of data system sources that support the creation of traffic stop data used for analyses for Paragraphs 64-67.

We reviewed the draft EIU Operations Manual, which contains procedures for traffic stop data quality assurance. The draft procedures lack sufficient detail about: sources of traffic stop data; management; and accountability standards; to ensure the integrity and accuracy of traffic stop data; documentation about how disparate data sources will be combined into a single data file for subsequent periodic analysis as prescribed by Paragraph 65 below; and procedures for ensuring the data dictionary that accompanies the single traffic stop data file will maintain timeliness and validity.

We received the protocol developed by MCSO's Technology Management Bureau for maintaining the integrity and accuracy of the electronic traffic stop data contained in the TraCS system. The TraCS system allows deputies to open any traffic stop form available to them and create a new record for the type of form selected (Citation, Incidental Contact, Warning, or Vehicle Stop Contact Form). For example, if a deputy makes a traffic stop and intends to issue a citation, he would open the citation form and a new instance of the citation data would be created during the data entry process. In all cases, the deputy creating a new data form is the only user that can update the data via the TraCS application. All forms lock the data entry process when the form has been marked "Issued" or "Completed," prohibiting any other user from modifying the data.

Outside of the TraCS application, Technology Management Bureau staff manage the servers and database that run the system; and consequently, the staff have access to the information in the system. There are a small number of users – the System Administrator, Application Development Supervisor, Reports Developer, and TraCS Administrator – who have access to this information.

On September 8, 2015, MCSO issued Administrative Broadcast 15-96, which addressed the security of paper traffic stop forms. The procedure requires that paper forms (prior to April 1, 2014) be kept in a locked cabinet box at the District. The protocol also addresses any 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. Any personnel who require access to those files must contact the division commander or his/her designee who will unlock the cabinet. Once the deputy accesses his file, a TraCS file log must be completed and signed by the deputy. During our April 2017 site visit, we visited Districts 1, 3, and 7 and inspected the written (hardcopy) files and the TraCS file log. All records were locked and secure, and logs were properly maintained. Only authorized personnel had access to the files. We conducted a random review of written traffic stop data in each District to ensure the written (hardcopy) traffic stop data was maintained for five years. We did not note any deficiencies.

MCSO began auditing traffic stop data in January 2014; and beginning in April 2014, MCSO has conducted audits of the data on a monthly basis and provided those results to us. After the January 2014 audit, MCSO created new forms to collect, by hand, the data required by policy until full electronic data entry began on April 1, 2014. We reviewed BIO's monthly audits of the traffic samples from January 1-March 31, 2017, and found them to be satisfactory. MCSO is auditing the 105 traffic stop samples we request each reporting period. BIO also audits the additional 30 sample pulls we request each reporting period of passenger contacts and persons' searches. The approved policy also requires regularly scheduled audits on a monthly, quarterly, and annual basis.

Prior to our April 2017 site visit, MCSO discovered a serious flaw in its traffic stop data related to the variable that is used to identify the location of a vehicle stop. This is further discussed below, but this data problem casts serious doubt on the integrity of MCSO's data quality control procedures. Because the discovery calls into question the protocols for MCSO's quality assurance procedures, MCSO is no longer in compliance with this Paragraph.

***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.*

**Phase 1:** In compliance

- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- GJ-35 (Body-Worn Cameras), most recently amended on January 7, 2017.

**Phase 2:** Not in 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 will provide every person contacted on a traffic stop with an Arizona Traffic Ticket or Complaint (Citation), a Written Warning/Repair Order (Warning), or an MCSO Incidental Contact Receipt. To verify compliance that the violator received the required “receipt” from the deputy, a signature is required, or, if the violator refuses to sign, the deputy may note the refusal on the form. We are unable to verify that motorists have been issued a receipt without a signature on the form, or the deputy advising of the refusal of the receipt from the driver. Placing “SERVED” in the signature box without any explanation does not comply with the requirement. For this reporting period, deputies issued citations or written warnings in 102 of the 105 cases we reviewed. There were two cases of incidental contacts, and one case where the deputy was reassigned to another priority call before the stop was made. There was one case where the deputy stated that the scanner was not working, and he did not obtain a signature on a written warning. MCSO is in compliance for 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 BWC 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 began reviewing the BWC recordings to determine if stop times indicated by CAD were accurate.

There were four instances in our review of 31 body-worn camera recordings where we could not verify if the times on the CAD printout matched the times on the BWC recordings. There were three instances in which the deputies activated the BWC after the stop was initiated and/or the vehicle was already stopped. There was one traffic stop where there was no activation of the BWC. In these cases, we could not verify the stop times to determine if they match the times indicated by the VSCF or the CAD printout. In addition, we noted some instances where

deputies turned off the BWC during extended stops, and then restarted them. We also noted some instances of improper mounting of the BWC, leading to limited visibility. The compliance rate for the sample of 31 cases selected from the 105 for using the BWC to determine if deputies are accurately reporting stop length is 87%. We also noted that from the sample selected for Paragraph 54.k., there were nine cases of late BWC activation and one case of no BWC activation.

Deputies need to be more attentive to the timely activation, as well as the proper placement of the body-worn cameras. MCSO is not in compliance with this Paragraph.

**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.*

**Phase 1:** In compliance

- GF-1 (Criminal Justice Data Systems), most recently amended on December 7, 2016.
- GF-3 (Criminal History Record Information and Public Records), most recently amended on December 14, 2016.

**Phase 2:** In compliance

To verify compliance for this Paragraph, we reviewed the applicable policies and met with Technology Management Bureau personnel to determine if any unauthorized access to the systems had occurred during this reporting period. 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; and that any violation is subject to fine. No secondary dissemination is allowed. Every new recruit class receives three hours of training on this topic during initial Academy training.

The Deputy Chief of the Technology Management Bureau advised during our April 2017 site visit that MCSO had no breaches to their systems. All databases containing specific data identified to an individual comply with federal and state privacy standards, and MCSO limits access to only those employees who are authorized to access the system.

During our April 2017 site visit, the Deputy Chief of the Technology Management Bureau advised us that an FBI compliance audit of NCIC (National Criminal Information Center) data was completed in February. The audit identified two cases of unauthorized use that occurred in 2011 and 2015. The incidents had been discovered and the offending employees had been terminated by MCSO, prior to the FBI audit. The failure was that no one notified the Technology Management Bureau of the incidents and the respective investigations. MCSO advised us that they are developing an incident response policy to ensure that any such incidents are reported to all stakeholders in the future.

**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.*

**Phase 1:** Not applicable

**Phase 2:** In 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 of the Order. BIO provided the traffic stop data, which included a spreadsheet of all traffic stops from October 1-December 31, 2015, listing Event Numbers as described at the beginning of Section 7. We then requested a stratified sample from all traffic stops. 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. MCSO has continued to provide full access to the traffic stop data.

**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.*

**Phase 1:** In compliance

- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In 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 audits 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 Districts. Occasionally, connectivity is lost in the field due to poor signal quality, and citations are handwritten (paper). 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. During our April 2017 site visit, we met with MCSO and the Parties, and reviewed the deficiencies BIO and our reviews discovered for this reporting period, along with the results of the Action Forms generated by BIO.

We inspected marked vehicles at Districts 1, 3, and 7 to verify that MCSO vehicles used to conduct traffic stops on a routine basis are equipped with the ability to input traffic stop data electronically. Due to the size of the fleet, the number of marked and unmarked patrol vehicles fluctuates from month to month. MCSO deputies have demonstrated their ability to access and use TraCS, as evidenced by the fact that their total time on a traffic stop continues to average 15 minutes or less.

### ***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.*

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

- GJ-35 (Body-Worn Cameras), most recently amended on January 7, 2017.

#### **Phase 2:** In 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. The transition from in-car to body-worn cameras has been documented in our previous reports.

Body-worn cameras were fully implemented and operational in May 2016, and the equipment has worked well. The BWC 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.

We verified during our District visits that all Patrol deputies have been issued body-worn cameras. Records indicate that MCSO began distribution of the body-worn cameras on September 14, 2015, and full implementation occurred on May 16, 2016. Every reporting period, we review a printout provided by CID that documents each deputy, by District, who has been issued a BWC.

During our April site visit, we met with Districts 1, 3, and 7 supervisors and commanders; and inquired if Patrol supervisors had experienced any difficulty with the downloading or review of BWC recordings. There have been minor issues with cords breaking and batteries not lasting the entire shift. MCSO is aware of these concerns and is presently evaluating an upgrade to the system.

***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 January 7, 2017.
- Body-Worn Camera Operations Manual, published December 22, 2016.

**Phase 2:** Not in compliance

MCSO evaluated on-person body cameras from other jurisdictions and selected a vendor (TASER International). Body-worn cameras have been implemented in all Districts since May 2016 and are fully operational.

To verify compliance for this Paragraph, we reviewed the body-worn camera recordings included in our monthly samples.

For our selection of a sample to review body-worn camera videos, we used the same sample we select for the CAD audio request. We reviewed 31 cases we requested where body-worn camera footage was available. Twenty-eight cases were in compliance, with the deputy activating the video- and audio-recording equipment as soon as the deputy decided to initiate the stop, and continuing to record through the end of the stop. There were four cases that did

not meet the requirements. In one case, the deputy activated the body-worn camera recording equipment after deciding to make the stop; the overhead emergency lights had already been activated. In two other cases, the vehicles had already come to a complete stop when the BWC recordings started. In another traffic stop, the deputy failed to activate the BWC per policy. We also noted that in our sample of 33 BWC recordings for Paragraph 54.k., there were nine stops where there was late activation of the BWC, and one stop where there was no video-recording.

MCSO has already discovered the value of body-worn cameras – including in instances where community members have lodged accusations against deputies and the recordings proved to be invaluable in resolving complaints.

**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.*

**Phase 1:** In compliance

- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- GJ-35 (Body-Worn Cameras), most recently amended on January 7, 2017.
- Body-Worn Camera Operations Manual, published December 22, 2016.

**Phase 2:** In 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 kept at the District level and filed separately for each deputy. When a deputy is transferred, his/her written traffic stop information will follow the deputy to his/her new assignment. During our April 2017 site visit, we inspected the traffic stop written data files of Districts 1, 3, and 7, to ensure that hardcopies of traffic stop cases are kept for a minimum of five years. We found that the files were in order and properly secured, and did not note any issues of concern.

**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), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- GJ-33 (Significant Operations), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.
- GH-5 (Early Identification System), most recently amended on March 24, 2017.
- EIU Operations Manual, currently under revision.

**Phase 2:** Not in compliance

To achieve Phase 2 compliance with this Paragraph, MCSO must demonstrate ongoing use of the methodology delineated in the protocol established for Phase 1 compliance in the monthly, quarterly, and annual analyses used to identify racial profiling or other bias-based problems. Paragraphs such as these are at the heart of the Order, as they are intended to look for evidence of racial profiling or other biased-based policing. The interests of the community will remain ill-served if the MCSO’s non-compliance with this Paragraph continues.

**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), most recently amended on December 14, 2016.
- GH-5 (Early Identification System), most recently amended on March 24, 2017.

**Phase 2:** Not in compliance

The Early Identification Unit (EIU) has been designated by MCSO as the organizational division responsible for this Paragraph. EIU is to conduct analyses of traffic stop data on a monthly, quarterly, and annual basis to look for warning signs or indicia or possible racial profiling or other improper conduct as prescribed by Paragraph 64. The findings of its analyses must be reported to the Monitor and the Parties. As discussed in Paragraph 67 below, MCSO has found problems with traffic stop data resulting in the reanalysis of findings from the two annual comprehensive evaluations. The data problem has also required a reanalysis of findings in the draft March 29, 2017 quarterly report. MCSO produced its first quarterly report in March 2017, as required by this Paragraph, but it was withdrawn for reanalysis. In addition, as discussed in Paragraph 67, EIU had suspended in May 2016 a flawed monthly analysis process while it worked to implement a new one that is analytically sound. MCSO's monthly analysis is not yet fully implemented. MCSO will achieve Phase 2 compliance with this Paragraph after successful implementation of the monthly, quarterly, and annual analyses and the sustained organization of EIU.

***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), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.
- GH-5 (Early Identification System), most recently amended on March 24, 2017.

**Phase 2:** Not in compliance

MCSO has completed two comprehensive annual evaluations of traffic stop data to look for evidence of racial profiling or other biased-based policing. It released the first annual comprehensive evaluation in a report dated May 24, 2016 titled, "Preliminary Yearly Report for the Maricopa County's Sheriff's Office, Years 2014 – 2015." The first annual comprehensive evaluation found that there are individual deputies engaged in racially biased policing when compared to the average behavior of their peers. MCSO released the second annual evaluation in draft on October 24, 2016, and it became final on March 1, 2017. The second annual comprehensive evaluation confirmed the findings from the first annual evaluation, and also reported that there is a culture of racially biased policing that permeates MCSO. Another important finding highlighted in the second annual comprehensive evaluation was that racially biased policing had not changed over time for Latinos. In addition to these two annual comprehensive evaluations, MCSO released its first-ever quarterly analysis of traffic stop data as a draft report on March 29, 2017 (the quarterly report). The quarterly report reviewed traffic stop data for the period July 1-September 30, 2016 (the first full quarter of data fiscal year 2017), and found evidence of racial profiling in stop outcomes at both the organizational and individual deputy levels.

Collectively, these analyses form the basis of determining the presence of racial profiling within MCSO. However, MCSO reported on March 30, 2017 that in its effort to implement thresholds required for Paragraph 67, it did not properly link a deputy's assignment setting in the TraCS system with the deputy's stop location. As reported by MCSO in a memorandum to the Monitor dated April 6, 2017, the District assignment information is entered manually – but due to constant movement of deputies throughout the organization, the information about a deputy's assignment to a District is inaccurate. MCSO had associated the geographic location of traffic stops using this flawed assignment information, which resulted in many traffic stops being miscoded geographically. This meant that, for some traffic stops, the District in which a stop occurred was not the same District in which a deputy might have been flagged by MCSO's District analysis. MCSO requested additional time to resolve the problem before completing its work on the benchmarks. The April 6, 2017 memorandum stated that because the data representing a deputy's assignment area was inaccurate and unreliable, all District-level traffic stop analyses would need to be redone. The April 6, 2017 memorandum stated that MCSO discovered the error as a result of its effort to implement the new benchmarks prescribed in Paragraph 67 that we required MCSO to implement to correct what we had determined earlier to be a highly flawed monthly analysis of traffic stop methodology.

Conceptually, the importance of knowing a deputy's area of assignment is that it affects analyses of traffic stops, particularly those that involve comparing the behavior of a deputy to the average behavior of the deputy's peers. Understanding what the meaning of the word "peer" is what it at issue. Peer analysis occurs on at least two dimensions. One is when a deputy's traffic stops in a specified geographic area (e.g., a District) is compared with every other deputy who makes traffic stops in the same geographic area. In this case, traffic stops are assumed to share similarities essentially due to geography. The other dimension is to group deputies by area of assignment, and compare a deputy's traffic stops to those of that deputy's peers, regardless of where the traffic stop occurs. Here, the concept of "peers" would include all deputies who work together, for example, in a unit whose behavior would be influenced by a shared command structure and supervisory experience. The lack of reliable information about

the deputy's assignment means that peer analysis comparisons can only occur along one dimension (geography). Examining traffic stop behavior among deputies sharing the same assignment, or even to use information about assignment in inferential analysis to discern statistical differences due to assignment cannot be done without accurate and current information on each deputy's assignment for every traffic stop.

**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), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- GH-5 (Early Identification System), most recently amended on March 24, 2017.

**Phase 2:** Not in compliance

The EIU provides monthly analyses and documents describing the benchmarks used to set alerts for possible cases of racial profiling or other misconduct involving traffic stops. As reported in EIU's May 2016 report ("Monthly Document Report Regarding Paragraph # 65, 66, 67, 74"), EIU's process for analyzing traffic stop data for the purposes of setting alerts for deputies potentially engaging in bias-based policing had been suspended to enable EIU to implement new thresholds and the methodology for using them as described in our May 2016 guidance. We developed the new benchmarks, along with requirements for their implementation. The draft EIS Project Plan 3.0, dated January 20, 2017, stated that four of the 11 benchmarks identified were operational as of December 22, 2016. The remaining benchmarks were projected to be operational by January 31, 2017, but this target date was missed due to SPSS

syntax problems. In a March 6, 2017 memorandum, MCSO noted that four benchmarks (Benchmarks 3, 6, 7, and 8) were fully functional, leaving seven benchmarks needing to be completed. In an April 6, 2017 memorandum, MCSO reported that it had conducted monthly analyses on nine benchmarks (Benchmarks 1, 2, 3, 5, 6, 7, 8, 10, and 11) and incorporated them into EIS. The memorandum also noted that while four of the benchmarks were used at the organizational and beat levels, District analyses could not be conducted at the District level because of data problem affecting the District-level analyses. This affected Benchmarks 1, 2, 5, and 11. MCSO reported that the data representing a deputy's assignment was inaccurate and unreliable. In its April 6, 2017 memorandum, MCSO reported its intent to include District-level analyses for the four benchmarks by the end of April.

The April 6 memorandum also reported that the data problem described above meant that the descriptive and inferential analyses in the annual reports and in the first quarterly report would need to be redone. We submitted questions on April 7, 2017 to MCSO in response to the April 6, 2017 MCSO memorandum that addressed, among other issues, data quality control procedures within MCSO. MCSO responded to our questions on April 13, 2017. MCSO's response included its new plans for implementing reliable data quality control procedures involving offices within MCSO responsible for any aspect of preparation of traffic stop data used by MCSO in its periodic analyses.

During our April 2017 site visit, we discussed with MCSO and the Parties the status of Paragraph 67. We reviewed the implications of the deputy's area of assignment data problem on analyses of traffic stop data; MCSO's plans to correct the data problem; MCSO's plans to fully reinstate the monthly analysis of traffic stop data; MCSO's plans for reanalysis of the annual and quarterly evaluations; EIU's plans to resolve the deputy assignment variable problem; and MCSO's plans to implement quality assurance efforts to prevent the reoccurrence of data problems. MCSO requested additional time to finalize its plans to correct the deputy assignment data problem. We requested that MCSO develop a solution to be implemented no later than July 1, 2017, which represents the start of the new traffic stop data year (Fiscal Year 2018). We will report on MCSO's efforts in our next quarterly status report. MCSO also reported during the meeting its intent to have the 11 benchmarks operational end the end of April 2017, including District-level analyses for Benchmarks 1, 2, 5, and 11.

During our April site visit, MCSO reported the following information regarding the operational status of the 11 benchmarks. This information was also reported in the draft EIS Project Plan 4.0, dated April 1, 2017. For purposes of comparison, the following narrative incorporates MCSO's benchmark-naming convention.

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). As part of our May 2016 guidance, we recommended that the threshold used for the first benchmark to detect racial or ethnic disparities for traffic stop violations use all traffic stop data (and that EIU end its earlier practice of selecting traffic stops for deputies making 10 or more stops); and instead employ “two-step ratio analysis methodology” (the two-step rule), which we have documented in our past quarterly status reports.

Regarding the first benchmark in Paragraph 67.a, during our April 2017 site visit, MCSO stated that the Benchmarks 1 and 2 for minor traffic stops and arrests following a traffic stop would be completed by January 31, 2017. However, the revised draft EIS Project Plan 4.0 dated April 1, 2017 reports that Benchmarks 1 and 2 were completed at the organizational and beat levels, but that the District-level analyses would be delayed. The new target date was set for April 30, 2017 for each benchmark. Benchmark 3 has been operational (by manual entry) since May 2016. Once we verify the successful implementation of Benchmarks 1 and 2, MCSO will be 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). The draft EIS Project Plan 4.0 reports a target date of April 30, 2017 for organizational-, District-, and beat-level analyses. During our April 2017 site visit, MCSO confirmed this target date. Once we verify its successful implementation, MCSO will achieve 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 draft EIS Project Plan 4.0 reports that this benchmark was operational at the organization and beat levels as of March 10, 2017, and targets April 30, 2017 for full implementation. The second benchmark pertains to seizures of contraband (Benchmark 6): MCSO is required to identify low rates of seizures of contraband following a search or investigation. The third benchmark is similar to Benchmark 6, but it pertains to arrests following a search or investigation (Benchmark 7). According to the draft EIS Project Plan 4.0, Benchmark 6 was operational by manual entry as of December 1, 2016. This is also the case for Benchmark 7. MCSO is working to develop SPSS syntax to automate its use of Benchmarks 6 and 7. Once the SPSS syntax for Benchmarks 6 and 7 is automated and we verify their successful implementation, MCSO will achieve 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 instructing supervisors how to validate data in TraCS in those cases involving duplicate traffic stop records to deliver timely data validation for our review. The draft EIS Project Plan 4.0 reports that MCSO began the data validation process 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. The draft EIS Project Plan 4.0 reports a target date of April 30, 2017 for Benchmark 9 to become operational. Benchmark 10 is defined as racial or ethnic disparities in passenger contact rates. The draft EIS Project Plan 4.0 reports that Benchmark 10 would become operational on March 24, 2017. In addition to these two benchmarks, EIU is also developing a third benchmark for Paragraph 67.e. for non-minor traffic stops (Benchmark 11). The draft EIS Project Plan 4.0 reports that Benchmark 11 became operational at the organization and beat levels on March 1, 2017. The target date for District-level analysis for Benchmark 11 is April 30, 2017. Once these benchmarks become fully operational and we verify their successful implementation, MCSO will achieve compliance with Paragraph 67.e.

**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.*

**Phase 1:** In compliance

- GJ-33 (Significant Operations), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In compliance

MCSO has not conducted a significant operation that met the requirements of the Order since Operation Borderline in December 2014. We reviewed documentation of joint operations with Customs and Border Patrol (Operation Gila Monster) in October 2016, and noted that the provisions of this Paragraph were not applicable to those operations.

We assessed Phase 2 compliance by way of document requests fulfilled by District command staff and the Investigations Chief, as well as via personal interviews during our site visits in January and April. Each month CID requires that command personnel from each District, and the Special Investigations Division, author a memorandum about involvement in significant operations involving 10 or more MCSO personnel or immigration-related enforcement involving five or more arrests. The documents provided for January through March 2017 indicate no such involvement throughout the organization.

In addition, during our January and April site visits, the Captains of Districts 1, 2, 3, and 4 indicated during personal interviews that no deputies within their Districts had been involved in a significant operation or immigration enforcement meeting the requirements of this Paragraph.

***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

- GH-5 (Early Identification System), most recently amended on March 24, 2017.

**Phase 2:** Not in compliance

MCSO continues to work on modifications of the monthly traffic stop report that will not only trigger alerts for particular activities of deputies, but that also can be used as a resource for supervisors to oversee the actions of their subordinates. BIO has also incorporated Action Forms in Blue Team to better track supervisors who may not be using the EIS tools to their full potential. The goal of this process is to ensure that command staff in the Districts hold their supervisory personnel accountable for the oversight of deputies. MCSO published GH-5 (Early Identification System) on March 24, 2017, and is currently developing comprehensive EIS training.

MCSO has been making steady progress in its work with CI technologies to develop a bridge between remote databases to form the core information for an EIS system. While traffic enforcement data, through TraCS, has been more reliably available, Patrol enforcement information has not. MCSO is currently pilot-testing several aspects of the interface and making modifications as the need arises. Supervisors have always had access to the majority of this information, but the interface intends to bring all this data into one environment to ease the opportunity of supervisors to conduct adequate oversight of their subordinates.

As this process is evolving, there has not been a coordinated analysis of the information conveyed through this interface, nor is there evidence that individual supervisors have used this information to evaluate their subordinates without the input of EIU. Both of these activities will be required before MCSO achieves Phase 2 compliance. District 1 supervisors, who are participating in the pilot test, noted that they had offered EIU personnel several suggestions regarding the interface. MCSO has stipulated with the Parties that all EIS data requirements should be in place by June 1, 2017. We will discuss this further in our next quarterly status report.

MCSO is also making progress on the delivery of new monthly traffic data analysis, as well as the first quarterly analysis based upon this same traffic data. Each is projected to provide supervisors with additional resources to evaluate the effectiveness and potential biased/problematic activity of their subordinates. Each has been delayed due to issues related to the data itself or the syntax used to produce it in a way that is beneficial for supervisory review. EIU has been working with ASU and several other units within MCSO to correct the problems that have come to light. The reports from January and February offer generic tables of traffic stop length, searches, and citation rates – but little practical information a supervisor could use. The March report indicates that nine out of the 11 benchmarks from Paragraph 67 were used in the monthly analysis to generate 125 alerts, but there is no indication which benchmarks these alerts were linked to. Therefore, while this report provides some insight into the analytic process and individual supervisors will receive specific information about their subordinates, this report provides little useful information to the average supervisor. We raised these issues during our April site visit meetings, and EIU is continuing to modify the report to provide more information for supervisors.

Each month, EIU provides a list of all completed alert investigations it has sent to supervisors for further review. From this list, we select 15 to evaluate the effectiveness of the supervisory oversight. For the past several reports, we have noted that not all supervisors were using EIS tools to their advantage. At present, likely due to the lack of adequate EIS/Supervisory Training, there are supervisors who are closing out these investigations with little information about how they addressed the alerts or whether they had actually communicated with the deputy in question. For example, in the monthly report for February, eight of the 15 alert investigations did not provide sufficient detail from the supervisor to understand why they closed the alert. Moreover, in the seven alert investigations that were adequately closed, three had been sent back to the original supervisor upon review by command staff. We raised our concerns with EIU during our April site visit, and learned that the upcoming EIS and Supervisory Training will substantively address alert investigation processes. EIU has also begun attaching much more detailed documentation – including citations, Incident Reports outlining searches or seizures, and other information – to the alert investigations. This makes it easier for supervisors and others in the chain of command to evaluate whether the line supervisor dealt with the investigation appropriately.

BIO has routinely conducted audits of supervisory use of EIS and related Patrol activity information. When supervisors failed to use these tools appropriately, BIO sent out Action Forms to the appropriate District command staff for review and action, typically resulting in counseling of supervisors. The Action Forms were sent via email, and responses from District staff were sent in the same way. Due to the cumbersome nature of such processes, EIU and BIO personnel automated this process in Blue Team. MCSO issued Briefing Board 17-18 on April 4, 2017 to all employees to outline this change. This automation should streamline the oversight process of line supervisors by command staff, and afford an automated way of cataloguing whether some line supervisors are having particular difficulties meeting their oversight responsibilities. We will evaluate the application of this new process in future quarterly status reports.

BIO conducts a monthly inspection of Patrol Activity Logs based upon a sample of deputies drawn from all Districts. A fundamental feature of this inspection is to ensure that supervisors are reviewing the patrol logs of their subordinates within seven days of the completion of a shift. These inspections generally find a compliance rate for the organization in the ninetieth percentile – including 92% in January and 97% in February. However, these reports also indicate that District 5 received Action Forms for two supervisors who have not routinely met the seven-day deadline. District 5 command staff has addressed these deficiencies with further training for the supervisors in question and additional oversight by the squad lieutenant.

MCSO also began using the “Review” and “Discuss” fields in TraCS in June 2016. The Review field allows supervisors to note the date when they finished the initial review of individual traffic stops conducted by their subordinates. The Discuss field affords supervisors the ability to indicate when (date and time) they reviewed the traffic stop contacts of their subordinates with them. MCSO introduced these new fields to the organization via an Administrative Broadcast, as EIS training is still under development.

BIO conducts monthly audits of the Review and Discuss responsibilities of supervisors using the same sample outlined above. For the review requirement, supervisors have 72 hours from the citation time to review the traffic forms to ensure completion and accuracy. BIO’s January report indicated an overall compliance rate of 93%, with Action Forms going to Districts 3, 5, and 7. BIO’s February and March reports demonstrate significant improvement in overall compliance – 97% and 100%, respectively. The discussion aspect of the citation process requires that supervisors discuss citations with their subordinates at least once a month. BIO audits have found a high compliance rate of 96% in December and 99% in January. Due to the 30-day period allowed for discussion, the audit reports are always a month in arrears. Districts 5 and 7 received BIO Action Forms in December because two supervisors failed to conduct citation discussions with their deputies in a timely fashion. The same issues did not arise again in later months.

Several overlapping issues are reviewed in the Supervisory Note inspections conducted by BIO each month. BIO checks Blue Team entries to ensure that supervisors make two note entries per month for their subordinates, one performance-based entry, two random body-worn camera reviews, and that they document bi-monthly reviews of EIS data reports. Over the past several months, we have noted some dramatic fluctuations in compliance. During the period of January-March 2017, there was a steady improvement in meeting the above supervisory

requirements: 83% in January; 86% in February; and 96.5% in March. In earlier reporting periods, the greatest problems were related to the two body-worn camera and EIS data reviews. The emailed Action Form process has addressed some of these deficiencies, but we anticipate that including these forms into an automated Blue Team process will allow EIU to more quickly address deficiencies and track any issues to particular supervisory or command personnel. Finally, EIU and BIO personnel coordinated in the development of training for EIS and Supervisors, planned for the summer of 2017 that will address many of the deficiencies noted here.

Finally, BIO conducts a quarterly audit of Supervisory Notes that examines supervisors' discussions with their subordinates about discriminatory or bias-based policing, in accordance with Paragraph 22 and CP-8 (Preventing Racial and Other Biased-Based Profiling). We noted in our last report that in the last quarter of 2016, BIO found that six of the seven Districts showed 100% compliance; but in District 3, the audit showed that one supervisor failed to conduct these discussions or failed to note these discussions in the proper field. While the first quarterly Supervisory Notes audit for 2017 is not yet complete, we were pleased to review Briefing Board 17-07, issued on February 7, 2017, that reiterated the organization's commitment to CP-8, in addition to CP-3 (Workplace Professionalism) and CP-5 (Truthfulness).

We anticipate that as supervisors become more familiar with these tools during the scheduled EIS and Supervisory Training, the compliance rate for supervisors' activities will improve over time.

**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), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- GH-5 (Early Identification System), most recently amended on March 24, 2017.

**Phase 2: Not in compliance**

MCSO published GH-5 (Early Identification System) after a lengthy development and revision process. The new policy clarifies, among other issues, the handling of alert investigations by supervisors, the ability of supervisors to set “discretionary” alerts for behavior that raises concern but has not yet triggered an official alert, and intervention options. MCSO produced a draft training curriculum for EIS and Supervisory Training, to commence during the summer of 2017. EIU also produced a first draft of the EIU Operations Manual that lays out the responsibilities of EIU, the method of data analysis for traffic stop data, and the thresholds that trigger alerts for a variety of activities – ranging from sick days to the use of force. We anticipate that the revised policy and the planned training should alleviate much of the ambiguity that has surrounded the use of EIS information for quite some time. MCSO is making steady progress toward a more complete implementation of EIS requirements.

Over the past year, MCSO, ASU, the Plaintiffs’ attorneys, the Plaintiff-Intervenors, and we have been working to improve the methodologies and definitions employed in the analysis of traffic patrol data to be used in monthly, quarterly, and annual reports. As recently as March and April 2017, new data problems have arisen that require new analyses for the annual reports and setbacks for the complete analysis required in the monthly traffic stop reports. These issues have taken time to uncover and rectify. MCSO is currently developing a more comprehensive data-handling process that involves all units within, or contracted by, the organization that have any hand in pulling raw data, adding GPS components to the data, or analyzing the data. We have suggested that MCSO implement such a process for several months, and are pleased that the new administration of MCSO has embraced and prioritized the investigation of new data-handling procedures that incorporate sufficient accountability by all persons and units involved. However, delays such as these have also caused concerns, due to the fact that effective supervisory intervention processes cannot occur without competent verifiable data and analytic methodologies.

In past quarterly status reports, we have noted our concerns with either the analysis involved in the Traffic Stop Annual Reports or the actions of MCSO to create supervisor intervention processes based upon them. In October 2016, MCSO requested technical assistance to create a supervisory intervention process based upon the findings of the annual reports. Since that time, select members of the Monitoring Team, Plaintiffs, Plaintiff-Intervenors, and MCSO have been collectively involved in the development of refined analytic strategies and supervisory processes to respond to the findings in the annual reports. EIU will be responsible for providing supervisors with not only the results relevant from the reports, but any additional documentation that may be indicated, depending on the types of findings reported. This will make the review process of supervisors much more straightforward. The entire group has also participated in developing guidelines and checklists for supervisors to remove any guesswork from the process. While we await the reanalysis of the annual traffic data, we are confident that if the processes developed through the technical assistance are implemented properly, the intervention pilot project will yield the results hoped for. We remain concerned, however, that the start of interventions has been repeatedly delayed. Moreover, we are concerned that the monthly reviews of traffic stop data by supervisors has not resulted in finding any problematic/biased activity that was not the result of analysis conducted by EIU.

Finally, the initial technical assistance project emanating from the annual reports has led to the initiation of a checklist for monthly alert investigations that supervisors are responsible for. This new process will help to overcome many of the criticisms we have had of monthly alert investigations conducted by supervisors. As noted in Paragraph 69, we remain concerned with the finding in the February alert review that over half of the supervisors closed the investigations with inadequate descriptions of how they conducted the investigations and the reasons underlying their closure. More importantly, we are troubled that out of the 15 cases reviewed in that month, only three indicated that command staff in the Districts requested additional information from the line supervisors. The new checklists and processes that EIU is implementing should reduce these concerns in the future. We also note that in the March monthly production request for this Paragraph that EIU has implemented the alert processes emanating from the monthly traffic stop analysis. This report indicates that 125 alerts were generated from the TraCS analysis, and of these 119 were referred to supervisors for further review. What is lacking in this new reporting feature is an indication of which of the 11 benchmarks from Paragraph 67 yielded these alerts. We will work with EIU to refine this report and evaluate the processes of supervisory review as they evolve. As noted previously, EIU is currently planning to devote a substantial section of the upcoming EIS and Supervisory Training to these processes. As these processes are established, EIU will communicate with line supervisors to ensure that the EIS is used for maximum effect and efficiency.

*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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

MCSO has provided us with access to all existing data from monthly to annual reports, as well as inspections and audits. MCSO has requested technical assistance for various data issues and supervisory processes based upon all data analyses. MCSO has actively sought our input and proposed changes to methods or processes where it was appropriate.

As noted in Paragraph 70, the Blue Team system adopted by EIU for tracking the alert status of cases of concern has improved our ability to review and comment on the supervisory processes that exist in MCSO. EIU is also looking to implement a checklist for the responsibilities of supervisors regarding the monthly alert investigations assigned to them in Appendix B of GH-5 (Early Identification System). EIU has also begun to provide supervisors, and us, with much more documentation underlying the alert investigations sent to supervisors. This additional information has streamlined the process of evaluation – and along with EIS training, should improve the quality of supervisors' reports.

BIO also recently modified how it communicates deficiencies uncovered in the audits and inspections BIO conducts. In past quarterly status reports, we noted that emailing BIO Action Forms to District command staff was inefficient and difficult to track. In response, EIU and BIO created an automated Blue Team process for relaying the Action Forms to the Districts.

This resulted in a much more transparent process that allows for easier tracking and verification. We will evaluate the additional accountability that this creates in the process in future quarterly status reports. We recognize that EIU and BIO staff have repeatedly sought ways to overcome problems that arise as a result of data analysis or audits and inspections.

MCSO is meeting our expectations regarding our access to the aforementioned reviews and data of interest for this Paragraph.

## 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

- GH-5 (Early Identification System), most recently amended on March 24, 2017.

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

The Early Identification Unit (EIU) continues to work with us, the Parties, and EIU’s private contractors to modify and improve the EIS through policy revision; database interfaces; analyses; and the development of methodologies for annual, monthly, and quarterly reports. We have noted technological issues in the past that have impeded the ability of MCSO to fully operationalize the EIS. Although we have noted a willingness of the new administration over the past several months to address the issues that remain problematic, new issues have arisen that make the implementation of a fully functioning EIS as difficult today as it was six months ago. These include problems with data, which should have been discovered previously, as well as the coordination of critical units across the Office that handle data for the varied analyses noted above. At our repeated prompting, and the discovery of additional data-handling issues, MCSO is now developing improved data-handling processes. MCSO has established a committee of key organizational units that handle the data used for all analyses to ensure that each time data is passed from one to the other that the proper documentation and analyses follow the data. MCSO has documented the new data processes in the EIU Operations Manual, which has already undergone the first review by our Team and the Parties.

MCSO developed and modified an EIS Project Plan that lays out nearly every aspect of the requirements of the Order pertinent to EIS. This process began in October 2016, and was in the fourth revision as of April 2017. The Project Plan delineates the tasks that have already been accomplished and lays out the processes and target dates for those that have yet to occur. Whenever MCSO has anticipated that it will not meet a prospective target date, MCSO has advised us ahead of time and requested an extension. We remain concerned, however, that MCSO has not discovered many of the problems that have arisen earlier.

MCSO developed a new Blue Team process where BIO personnel can transmit Action Forms to District command staff when audits or inspections uncover deficiencies in supervisory oversight. In the past, these Action Forms were transmitted via email, and there was little documentation besides the email exchanges. We have noted the inadequacy of this process

during several site visits and in several past quarterly status reports. In response, BIO and EIU developed an automated process of Action Form transmission in Blue Team. This will allow BIO staff to more easily track the reasons that generated the form and the responses of District staff to these deficiencies. In addition, this allows for a more complete examination of whether the same line supervisors are responsible for multiple lapses in supervisory oversight. Briefing Board 17-18, issued on April 4, 2017, disseminated the new process throughout the Organization. We will evaluate the effect of this automation during our future site visits and document reviews. In particular, we want to ensure that District command staff are using these new processes and staying abreast of any deficiencies noted in the BIO audits or inspections.

BIO also conducts quarterly audits regarding CP-8 (Preventing Racial and Other Biased-Based Profiling) by inspecting the Supervisory Notes in Blue Team. During the fourth quarter of 2016, BIO found that 25 of 29 deputies in the sample experienced discussions regarding MCSO's "zero tolerance policy" for discriminatory policing. The four remaining deputies were all from District 3. This was the second successive quarter in which deputies in District 3 received no reinforcement prohibiting biased policing from their supervisors. MCSO published Briefing Board 17-07, issued on February 7, 2017, that reiterated the organization's commitment to CP-8, as well as CP-3 (Workplace Professionalism) and CP-5 (Truthfulness).

In addition to the automation of the BIO Action Form process, EIU had previously automated the transmission of alert investigations to supervisors. While the automation resulted in the ability to better track these processes, they have not yielded a significantly improved investigation process on the part of line supervisors. Nor has it resulted in a significantly improved response by command personnel in the Districts when those supervisor investigations are lacking significant detail. We have repeatedly expressed our concerns to EIU personnel. In response, we noted that the planned Supervisor and EIS training, scheduled for the summer of 2017, includes significant portions that will walk supervisors through various investigation scenarios and require them to work through the process of interacting with their subordinates. We will evaluate whether this training reduces our current concerns regarding line-level supervision. At present, less than half of the supervisors required to conduct these investigations are providing sufficient information to suggest that they have adequately attended to the issues raised. It is important to note, however, that EIU is also providing substantial documentation accompanying these alert investigations. The training should assist supervisors to address problematic behavior and document their actions for chain of command review.

Finally, as we have noted in previous Paragraphs, we remain concerned about the many difficulties that have plagued all statistical analyses of the behavior of line deputies. Some of these issues have resulted from problems with the data; and others, from poorly planned supervisor intervention processes. However, as these issues have arisen, MCSO has been responsive to the critiques from us, the Plaintiffs' attorneys, and the Plaintiff-Intervenors. MCSO has requested technical assistance to address these issues. The technical assistance has involved all Parties who have participated in creating solutions that MCSO has embraced. We will continue to evaluate these new processes as they are established. In the meantime, we remain concerned that any meaningful intervention of potentially biased/problematic policing has yet to occur.

**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”).*

**Phase 1:** In compliance

- GH-5 (Early Identification System), most recently amended on March 24, 2017.

**Phase 2:** In compliance

The EIU is a fully functioning unit. A lieutenant coordinates the unit, with three sergeants working on investigations, one analyst, and one administrative staff member under the auspices of BIO. During our April site visit, we learned that EIU is scheduled to hire two new administrative assistants; the timeline for these hires was not yet available. We noted that the ability of MCSO to address several of the outstanding data and reporting issues might be better addressed by hiring someone who could conduct and verify some of the analyses now conducted by ASU. We will report on these new hires as they occur.

EIU staff continue to conduct data analysis using data they have compiled from sources across the organization – including CAD, RMS, Blue Team, TraCS, EIPro, and others. We have already noted the problems with both data and software that EIU is experiencing. However, both EIU – and MCSO more generally – have been quick to address the difficulties as they have been realized. Moreover, MCSO has now begun a developing a data-handling protocol that should diminish the possibility of future issues. EIU and ASU are currently working to overcome data problems that impact the annual and quarterly data analyses, as well as syntax and software problems that impact the monthly reports based upon TraCS data. EIU personnel continue to believe that all of these issues will be addressed in time for the scheduled EIS and Supervisory Training during the summer. Following the discovery of data problems pertaining to the location of stops and the assignment of deputies, EIU and ASU developed an alternative that met our and the Parties’ approval. Once complete and verified, MCSO will conduct a reanalysis of the annual data that lays the groundwork for the supervisory intervention processes that have been developed. We will comment on the specifics of each analysis as they are published.

**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 amended on March 24, 2017.

**Phase 2:** Not in compliance

We have noted in past quarterly status reports that much of what EIU personnel had achieved in the first years since its development, in 2013-14, have been largely “qualitative,” given that the data analysis conducted and thresholds used were based upon personal experience – rather than quantitative or theoretical foundations. There is also little historical documentation supporting much of the early activity of EIU. However, since the summer of 2016, we have observed notable progress with the EIS. The EIU has now created an EIS Project Plan that was in its fourth revision in April 2017, and EIU personnel have overseen a substantial revision of the EIS policy published in March 2017. Additionally, the EIU has now produced a draft version of the EIU Operations Manual and developed a new training curriculum based upon the most recent version of the EIS policy and substantial input from us and the Parties.

The Operations Manual lays out the responsibilities of EIU and the thresholds and benchmarks to be used in the analyses of TraCS data. The EIU is now overseeing the modification of the monthly analyses to coincide with our suggestions related to the benchmarks outlined in Paragraph 67. Moreover, EIU personnel requested technical assistance for both data analytic strategies and supervisor intervention processes resulting from the annual analysis of TraCS data. EIU personnel are also leading the way in developing a more comprehensive data-handling process that brings together entities ranging from MCSO Technology Management Bureau personnel to ASU subcontractors. These new processes should lead to fewer data problems in the future.

We will evaluate these new processes as they are memorialized. We have already noted how the new monthly benchmark analyses for this Paragraph, and Paragraph 67, have been improved with our guidance. We continue to discuss with EIU the best method of presenting the benchmarks in EIU’s varied reports. We anticipate that the upcoming EIS and Supervisory Training, scheduled for the summer of 2017, will provide additional information for improvement of the protocols and benchmarks that EIS uses in its analyses.

***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

- GH-5 (Early Identification System), most recently amended on March 24, 2017.

**Phase 2:** Not in compliance

MCSO has made significant progress toward fulfilling portions of this Paragraph. Even though MCSO has routinely collected information relevant to this Paragraph, the information has not been captured in a format that allows it to be used in a relational database. For this to occur, MCSO has had to build interfaces between remote databases and the EIS database. As noted below, there remain pieces of information that are either not yet incorporated into the EIS database or are not completely incorporated in a manner that allows ease of access for supervisors.

Since January, MCSO has informed us of problems with the original data, as well as the software syntax that manipulates the data into a useful EIS format. For that reason, the annual and quarterly analyses have to be recalculated, and the monthly analyses have yet to be fully implemented. To MCSO's credit, the agency has quickly acknowledged these deficiencies when they have been discovered. Moreover, MCSO requested technical assistance in several areas where they have experienced problems. MCSO created an EIS Project Plan, laying out what has been accomplished to date and what is in production, along with target dates for those items that remain outstanding. Additionally, MCSO is developing a data-handling protocol, including that all of the critical units within and outside of the organization that must work together to ensure that the data are in a format that allows for an effective monthly, quarterly, and annual analyses to occur. The Project Plan is currently in the fourth version and outlines

precisely what needs to occur to meet the requirements of the Order. The data-handling processes are incorporated in the EIU Operations Manual and continue to be developed. On several occasions, unforeseen issues have arisen and MCSO has requested an extension to the target dates included in even the most recent version of the Project Plan. We remain optimistic that MCSO can incorporate all necessary data into the EIS system in time for the EIS and Supervisory Training to occur during the summer of 2017.

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. During our last two site visits, we and the Parties discussed and reviewed the type of description or summary that would be available to supervisors for review.

MCSO has been working with CI Technologies to provide immediate access to both open and closed complaints. Closed cases became viewable to supervisors in July 2016. Open cases became viewable on February 28, 2017. The material that is now viewable had been the subject of several discussions during our October 2016 and January 2017 site visit meetings. All Parties had the opportunity to voice their concerns during these discussions and approved the processes put into place in February. The information provided for the open cases includes a brief summary of the allegations and issues involved. PSB personnel determine what the summary information will entail and who has the ability to view the information based upon the specifics of each complaint. They have created standard rules for this process, so that the same type of information is available in every instance. While this information goes beyond mere labels of allegations, it appropriately does not include all of the details of an ongoing investigation to protect the integrity of the investigation. Finally, if there is any possibility that a supervisor is involved in a complaint, the supervisor will not have the ability to review the material. PSB staff make this determination. MCSO demonstrated the views and summary information for several open cases during our April site visit meeting. These examples were found to be consistent and effectively imparted the information necessary to understand the issues and principals involved in each complaint.

MCSO is in compliance with this Subparagraph.

Paragraph 75.b. requires that the database include “all internal investigations of alleged or suspected misconduct.” Similar to the above discussion of complaints, internal investigations exist in the IAPro system – a management system used by EIU, PSB, and CID to track and analyze information inclusive of internal complaints and outcomes. However, for privacy concerns, there must be limited access to this information. As discussed in Subparagraph 75.a., supervisors can now view synopses of both open and completed investigations. The amount of detail viewable to supervisors for open investigations had been the topic of several meetings during our October 2016 and January 2017 site visits. All participants in these discussions were allowed to evaluate and critique the proposed information, culminating in the production of Open Cases within EIS on February 28, 2017. MCSO demonstrated the material viewable to supervisors during our April 2017 site visit. PSB developed rules regarding who can view the cases and produced a standard format of information.

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.” In Paragraph 54, we describe how MCSO created several electronic forms to capture all relevant data related to traffic stops: Vehicle Stop Contact Forms and Supplemental Sheets, the Incidental Contact Receipt, and the Written Warning/Repair Order. During the first year of these electronic forms, both we and MCSO found data problems. Over time, most of these issues were addressed by requiring that the fields of these forms be made mandatory before a form can be closed. Most recently, MCSO programmed CAD to populate the traffic stop beginning and end times to alleviate the problem of extremely long traffic stops that were not being properly closed. In addition, MCSO – in conjunction with ASU, us, and the Parties – created a checklist of reasons that will appear as a drop-down menu for deputies to explain why a stop might be extended. Further, new thresholds and methodologies are under development for the monthly and quarterly analyses of traffic data. The data for this Subparagraph went in to the production environment on January 12, 2017 and became automated on January 19, 2017. MCSO demonstrated this view during our January site visit.

As noted below in Subparagraphs 75.e. and 75.h., MCSO has been pilot-testing Incident Report memorialization in selected Districts and units across the organization. During the pilot test, some “workflow” issues arose; the Technology Management Bureau is developing a solution. During our April site visit, MCSO noted that this resolution would allow the deputy writing an Incident Report to select, via a drop-down menu, his/her immediate supervisor who will receive a prompt to read and approve the IR. During testing, this did not work consistently and the Technology Management Bureau had to develop another alternative. Depending upon the results it encounters, MCSO will incrementally expand the pilot-testing across the organization. Until such time as these processes are complete, MCSO will not meet the “patrol data collection mechanisms” required by this Paragraph.

MCSO is not 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.” According to EIU, this information is evaluated and processed by the Legal Liaison Section of MCSO and entered into the system. Summaries of this information are available in the EIS database for review by supervisors. EIU noted, however, that there is no automatic link with other law enforcement agencies in the area; therefore, if an employee is arrested, the code of conduct policy requires that the deputy self-report those instances. Failure to self-report would result in discipline depending upon the circumstances involved. During recent site visits, EIU personnel and District supervisors demonstrated the ability to review this information for us. The introduction of the new EIPro software on November 8, 2016 afforded supervisors the ability to search fields of data using a variety of query techniques. MCSO was able to demonstrate these functions during our January 2017 site visit. In addition, during our visits to Districts 1 and 3 in April 2017, command staff demonstrated that they could access this information, as well.

MCSO is in compliance with this Subparagraph.

Paragraph 75.e. requires that the database include “all arrests.” All arrests are not currently included in the EIS database, but they exist in the Jail Management System, which is not directly linked to EIS. The Technology Management Bureau and EIU have been working with CI Technologies to create the interface that would pull specific data elements for each “arrest” into EIS. We and the Parties approved these data elements during the summer of 2016, and MCSO began pilot-testing the interface in District 1 on January 3, 2017. MCSO encountered problems during the pilot-testing of the interface. MCSO has addressed these issues and is preparing to begin a new phase of testing. If no additional problems are encountered, MSO will incrementally release the interface to each District until the entire organization is covered. MCSO advises that all aspects of EIS data will be functional before EIS and Supervisory Training is set to begin this summer. We will continue to evaluate the functionality of this field during our future site visits.

MCSO is not 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.” EIU already captures this information through Incident Report Memorialization. Supervisors must file these reports by the end of the shift in which they are recognized. In addition, if a court or prosecutor returns a case specifically for a lack of probable cause, the case is reviewed and memorialized in an IR. These notes currently exist in Blue Team as Supervisory Notes to the actions of their subordinates. Supervisors manually entered these notations when they discover them personally, and they are incorporated into Blue Team when prosecutors or courts notify MCSO that probable cause did not exist for an arrest that was not discovered by the immediate supervisor. On November 8, 2016, MCSO informed us that the newest version of EIPro had been pilot-tested and put into production for the entire organization. This version of EIPro allows supervisors to search fields of information using key words and phrases. MCSO met the target date for the functionality of this field.

During our January 2017 site visit, MCSO demonstrated the ability of supervisors to search this field. This was corroborated during our visit to District 1 during April 2017. Other actions by courts or prosecutors to decline or refuse prosecution are discussed in Subparagraph 75.i., below.

MCSO is 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.” According to EIU, 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. Therefore, EIU is including a subset of arrest and release cases in

the pilot-testing discussed above. EIU is working to coordinate these processes with the assistance of the Technology Management Bureau and CI Technologies. Following some problems encountered during the initial pilot test, MCSO's Technology Management Bureau created a "workflow" solution that the bureau will release across the organization once it is proven to be successful. It is important to note that EIU is manually entering the data from arrest and release cases until the functionality of the interface is complete. This is only a temporary solution. However, since there are so few cases that meet these criteria, EIU staff will continue to enter this information until that time.

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." If the incident does not involve a traffic stop, it should be documented in an Incident Report, which is scanned into FILEBOUND. At present, the FILEBOUND system does not communicate with EIS. The Technology Management Bureau, EIU, and CI Technologies have been developing an interface among several remote databases and EIS. This interface allows agreed-upon data elements to be pulled from the remote databases and incorporated into EIS. MCSO pilot-tested this interface in District 1. Several "workflow" problems arose during the pilot test that required an additional resolution. The issue involved the ability of the deputy writing an IR to designate which supervisor should review and approve the IR. In addition, MCSO planned for the contingency that a deputy's immediate supervisor may be on vacation or leave. In that instance, the IR goes to a District folder in Blue Team, where other supervisors covering for the absent sergeant will have the authority to approve these Incident Reports. MCSO's testing of these resolutions has already begun, and MCSO intends to expand the interface incrementally to other Districts as they achieve success in each phase of pilot-testing.

MCSO has made revisions to EA-3 (Non-Traffic Contact), which specifies the responsibility of MCSO personnel in different types of search events. Searches captured on VSCFs were placed in production on January 19, 2017. Incident Report searches are scheduled to be included in the EIS by May 31, 2017 as noted above in Subparagraph 75.e. and Non-Traffic Contact Form (NTCF) searches will be automated by April 30, 2017. We will verify that supervisors have the ability to search this field during our future site visits.

MCSO is not 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." Some of these already exist in the database. All cases involving the Maricopa County Superior Court system already reside in the system and are entered as a "County Attorney Action." The employee receives a direct message once these outcomes are entered into the system. In addition, a notice is sent to the deputy's supervisor, and both lieutenants and captains will be able to view these County Attorney Actions on their own supervisory dashboard screens. BIO already conducts monthly audits of County Attorney Turndowns to ensure that, at a minimum, probable cause existed for the initial action of the

deputy. With the introduction of new EIPro software in November 2016 these fields are now searchable by supervisors. MCSO demonstrated this ability during our January 2017 site visit. MCSO has also been working with the local Justice Courts to enter information relevant to this Paragraph and began production processed on January 12, 2017. MCSO continues to work with the Arizona Office of Courts (AOC) to gain access to Municipal Court dispositions. During our April site visit, MCSO informed us that the data from the AOC had not arrived as scheduled and the processes for inclusion had not yet been completed. MCSO maintains that this information will all be available in the EIS prior to the initiation of Supervisory Training during the summer of 2017. We will evaluate the sufficiency of these fields during our next site visit. Barring any unforeseen problems with the AOC data, MCSO has made steady progress incorporating the information from these remote courts.

MCSO is not 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. MCSO has revised its policies to now include “coaching” in GH-5 (Early Identification System) as non-disciplinary action (see Subparagraph 75.k. below). MCSO introduced a new version of EIPro in November 2016, which allows this and other fields to be searched by supervisors. MCSO demonstrated this ability during our January 2017 site visit. In addition, the monthly alert report generated by EIU includes a breakdown of cases that require additional training, discipline, or referral to PSB. The ability to search these fields was also corroborated during our visit to District 1 in January 2017.

MCSO is in compliance with this Subparagraph.

Paragraph 75.k. requires that the database include “all non-disciplinary corrective action required of employees.” MCSO maintains that at present, Supervisory Notes fulfill this requirement, along with the bimonthly reviews of a deputy’s performance. These notes typically describe the discussions that supervisors and subordinates have about the work of a deputy. Most do not rise to the level of discipline, but there are times where Supervisory Notes are used to further examine the activity of deputies. On November 8, 2016, MCSO notified us that with the production of the most recent version of EIPro, Supervisory Notes are now searchable using key words and phrases. MCSO demonstrated this ability during our January 2017 site visit. MCSO has also included in the latest version of GH-5 (Early Identification System) “coaching” as a non-disciplinary action that supervisors can employ. Non-disciplinary actions are also included in the monthly alert report created by EIU. In March, for example, there were approximately 10 instances of training, meeting with a supervisor, or coaching. BIO also evaluates the sufficiency of supervisory notes in a monthly audit. While compliance is improving, there remain significant gaps. When BIO finds that supervisors are not using EIS tools as required, BIO sends an Action Form to the District Commanders for remediation. With the upcoming EIS and Supervisory Training scheduled for the summer of 2017, we anticipate the compliance levels will improve.

MCSO is not in compliance with this Subparagraph.

Paragraph 75.l. requires that the database include “all awards and commendations received by employees.” The EIU has completed its work with the Compliance Division and revised the awards policy. MCSO published GC-13 (Awards) on August 27, 2016. With this publication, EIU created categories for awards or commendations within EIS. With the introduction of the newest version of EIPro, these fields are also searchable by supervisors. MCSO reported during our October 2016 site visit that it has manually entered all awards and commendations back to January 1, 2016. During our January 2017 site visit, MCSO demonstrated the ability to search this field. During our April 2017 site visit, MCSO demonstrated up-to-date award and commendation entries.

MCSO is in compliance with this Subparagraph.

Paragraph 75.m. requires that the database include the “[t]raining history for each employee.” MCSO uses a Skills Manager System (SMS) that is operated by the Training Division. According to the Technology Management Bureau, the SMS will not communicate with EIS. EIU took the initiative to retrieve the history of deputies from SMS and enter them into EIS manually. EIU started this process, beginning with the training that began on October 1, 2016. EIU intends to bring the EIS up-to-date, and then begin to work backwards to January 1, 2016 for all deputies. The introduction of the newest version of EIPro has also made this field searchable. MCSO demonstrated the ability to search this field during our January 2017 site visit. Until such time as MCSO adopts an automated SMS that can share information with the EIS database, we are satisfied with the manual entry of training history by EIU personnel. EIU demonstrated that this field is up-to-date during our April 2017 site visit.

MCSO is in compliance with this Subparagraph.

Paragraph 75.n. requires that the database include “bi-monthly Supervisory observations of each employee.” Currently, the supervisors memorialize their meetings with employees in Supervisory Notes in Blue Team. The newest version of EIPro was introduced on November 8, 2016. This version of EIPro allows supervisors to conduct searches of this field. MCSO demonstrated this ability during our January 2017 site visit, and the search function was also demonstrated at District 3 during our April 2017 site visit.

BIO conducts monthly audits of Patrol Supervisory Notes and the Review and Discuss fields in TraCS. In Paragraphs 69-70, we note several fluctuations in supervisors’ use of these tools. BIO is currently sending out Action Forms to alert command staff in the respective Districts about these trends. While the command staff response to these Action Forms has resulted in additional training and counseling at the Districts, we continue to observe several instances of insufficient use of these tools in several Districts. With the finalization of the revisions to GH-5 (Early Identification System) and the development of training to EIS, these fluctuations will be mitigated. BIO and EIU have also worked to incorporate BIO Action Forms into Blue Team. Briefing Board 17-18, published on April 4, 2017, explained the introduction of the Action Forms to Blue Team. Action Forms will now be trackable within the system. EIU is also proposing to set alerts in instances when supervisors repeatedly fail to use EIS tools as expected. These alert investigations will be transmitted through Blue Team, as described elsewhere in this report. We are confident that these strategies will improve the evaluation of MCSO supervisory personnel. The overall organizational compliance of the Supervisory Note

audits for January-March 2017 ranges from 83% to 96%. MCSO is also developing the EIS lesson plan, which will reinforce the timelines that supervisors must meet in performing these oversight requirements.

MCSO is not in compliance with this Subparagraph.

MCSO is making progress toward the development of a functioning relational database. A relational database is often defined as a collection of data items organized as a set of formally described tables from which data can be accessed or reassembled in many different ways without having to reorganize the original database tables. The ability to search most of the fields discussed above shows that MCSO is closer to compliance today than it has been in the past. The latest version of the EIS Project Plan envisions all data aspects for EIS will be in place prior to the initiation of EIS and Supervisory Training during the summer of 2017.

MCSO published new versions of GH-5 (Early Identification System) and EA-3 (Non-Traffic Contact). These policies specify how all MCSO personnel are to use these data and systems. The introduction of the newest version of EIPro, on November 8, 2016, improved the ability of supervisors to search particular fields relevant to Paragraph 75. This is a significant advance. Once the interface process that connects remote databases to EIS is complete MCSO will meet the basic definition of a relational database. We will verify all of the search functionality outlined above and anticipate being able to do so in future reporting periods.

***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).*

**Phase 1:** In compliance

- EB-2 (Traffic Stop Data Collection), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- GH-5 (Early Identification System), most recently amended on March 24, 2017.

**Phase 2:** Not in compliance

For traffic stops, MCSO meets these requirements in several ways. For instance, whenever EIU has found that information is repeatedly omitted from VSCF forms, EIU created mandatory fields that require deputies to complete them before a form can be closed. In addition, EIU has assisted in developing a quality check process by having supervisors review all traffic stops within three days of any citation. The integrity analyses that we have conducted have demonstrated that this information is rarely missing from the TraCS data supplied by MCSO.

A second issue arose following the analysis for the First Traffic Stop Annual report regarding stops that exceeded 900 minutes. Following some investigation and discussion, it was determined that CAD should populate both the start and stop times of traffic stops to minimize individual deputy errors. Moreover, rather than allow deputies to fill in a free-form field regarding why stops may be extended, EIU/ASU conducted an analysis of those lasting longer than 600 minutes, and found that they fell into a very few categories. With that information in mind, MCSO developed a drop-down menu for deputies to select from if they are on a traffic

stop for an extended period of time. These are typically drunk driving arrests or instances where a vehicle has to be towed. Over the past three years, MCSO has been swift to find solutions to problems that have arisen with the traffic stop data. The analyses conducted by EIU, and audits of BIO, have proven beneficial in uncovering some anomalies that can be addressed through technical modification.

The latest issue involving the quality of data has to do with the assignment location of a deputy. MCSO had been using the “LowOrg” measure in its analysis, which showed the assignment of a deputy for budgeting purposes. However, MCSO recently discovered that no one was responsible for regularly updating this information. As a result, deputies who transferred to new assignments were not being effectively tracked. This discovery called into question much of the analyses conducted to this point. MCSO developed a solution to this problem and is pilot-testing that at present. In addition, MCSO has brought all the critical units that impact the data together to create a protocol for handling data. We will continue to work with MCSO to ensure compliance.

However, as we noted in several Subparagraphs above – 75.e.g. (all arrests in differing contexts), and 75.h. (investigatory stops) – MCSO is still working to incorporate the necessary information in EIS to fully meet the requirements of this Paragraph. MCSO – in conjunction with CI Technologies – developed an interface between remote databases that house this information and EIS. MCSO began testing this interface in District 1 on January 3, 2017. During the past month, several issues have occurred during the pilot tests. Once these issues were realized, EIU developed alternative “workflow” processes to ensure that IRs go to the appropriate supervisor for approval. Once the solution is tested and successful, MCSO plans to incrementally provide access to all subsequent Districts. MCSO demonstrated the functionality of the interface during our April 2017 site visit. Full implementation of the interface should occur prior to the initiation of EIS and Supervisory Training scheduled for the summer of 2017.

MCSO also developed an EIS Project Plan in December 2016 that outlines what needs to be completed to make the EIS fully functional. The Project Plan specifies projects related to data access, policy revision, operations manual creation, and methods used to analyze data for monthly, quarterly, and annual reports. The Project Plan has already undergone four revisions. We are encouraged by the effort extended by MCSO to complete the EIS tasks in a timely fashion. Since the interface is still under pilot-testing and development, MCSO is not in compliance with this Paragraph.

***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.*

**Phase 1:** Not applicable

**Phase 2:** In 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.

At the close of 2015, all marked patrol vehicles were equipped properly. In addition, most unmarked vehicles located at the Districts are also equipped with the TraCS equipment. Each District, excluding Lake Patrol, has some unmarked vehicles not equipped with TraCS that are available for non-traffic functions. However, in the rare event that a TraCS vehicle is not available, or the vehicle equipment is not functional, each District has equipment within its offices that would allow a deputy to input his/her traffic stop information before the end of their shift, per EB-2 (Traffic Stop Data Collection).

In addition, the Deputy Chief of the Technology Management Bureau provided a letter in response to our document request that comprehensively shows the deployment of personal computers and printers across the Districts and specialty units. During inspections of Districts during our January 2017 site visit, we verified the availability of replacement vehicles equipped with TraCS and computers at all of the District offices should vehicle systems fail. The letter from the Deputy Chief is also a testament to the security of the system.

At present, it appears that the technology and equipment available in the agency meets the requirements of the Order.

***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.*

**Phase 1:** In compliance

- GH-5 (Early Identification System), most recently amended on March 24, 2017.

**Phase 2:** Not in compliance

The Deputy Chief of the Technology Management Bureau provided a letter in response to Paragraph 78. On the second page of this memorandum, there is a description of the security of the database and server. This information has been reiterated in the newly published EIS policy. MCSO has also included specific statements in the policy that limit access to individual deputy information to appropriate supervisory/administrative personnel. 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. The policy also explicitly stipulates that all other information will be retained in EIS indefinitely for purposes of aggregate statistical analyses. These statements meet the requirements of the Order.

During our April 2017 site visit meeting on restricted database access, the Deputy Chief of the Technology Management Bureau informed us that in preparation for an FBI audit of the system in February, the bureau found that there were, in fact, two instances of data breaches that had not been brought to the attention of Technology Management Bureau staff. These incidents occurred in 2011 and 2015, and involved employees improperly using NCIC for personal purposes. When these breaches were discovered by District or investigative personnel, Incident Reports were written and approved, but no one notified Technology Management Bureau personnel of these events. One person was eventually prosecuted, and the other was dismissed from the agency. However, these two revelations exposed a gap in MCSO's internal communications system. To resolve these issues, the Technology Management Bureau is developing an incident response policy to address the proper notification whenever an incident such as this occurs at any level of the Organization.

The significance of the security of the system is also discussed in Subparagraphs 75.a. and b. Our concern was whether supervisors had access to sufficient information about open and closed complaints and internal investigations. PSB and EIU were concerned that persons that may have acted improperly in ongoing investigations might have access to information before the investigations were complete. In response, PSB developed a set of rules regarding who has purview of this information and can modify this if circumstances change during an investigation. The driving issue for MCSO was the integrity and security of the database information.

MCSO has also been working with a contract partner, ASU, to ensure that the traffic stop data is in a format that allows for aggregate statistical analysis to be conducted. We have noted, particularly in Paragraphs 64-67, the problems that have arisen in conducting the first and second annual review of traffic stop data, as well as the monthly and quarterly data analysis. In addition, we have noted the limitations of information available in several Subparagraphs of Paragraph 75 above. MCSO is currently pilot-testing an interface that links remote databases with EIS. The completion of this project should precede the onset of training for EIS and Supervisors during the summer of 2017. At that time, we will re-evaluate the security and retention of data relevant to this Paragraph.

***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 March 24, 2017.

**Phase 2:** Not in compliance

MCSO does not have a fully “integrated” database. However, MCSO has made several modifications to TraCS over the past several months to achieve a more effective and complete system of data collection that can also be used for data analysis. Many of the problems that hampered the TraCS system came to light during the analysis leading up to the First Traffic Stop Annual Report. First, MCSO has changed the manual entry of traffic stop start and end times to an automated process using CAD information. Second, MCSO developed a drop-down checklist for deputies to describe why their traffic stops might be extended (tow operations, DUI arrests, etc.). Third, MCSO recently discovered that the assignment measure that had been used in the data since 2015 has not been routinely updated despite the numerous changes in deputy assignments across the organization. MCSO is working to solve this problem and develop viable solutions. However, this incident also exposed a large gap in data accountability within the organization. MCSO is working with all units that have data responsibilities to create a strict protocol for data-handling procedures. In addition, MCSO and ASU will have to reanalyze the data for the annual and quarterly reports.

In December 2016, MCSO produced an EIS Project Plan that specifies projects and sub-projects to make the EIS system fully functional. The Project Plan also outlines issues of policy publication, operation manual development and methods of analysis to be used in the annual, monthly, and quarterly reports. With all of the activity, the Project Plan is now in its fourth revision. As noted in Paragraph 75, MCSO had begun pilot-testing the interface that connects several remote databases with EIS. During this testing process, several issues arose and MCSO is developing solutions to overcome those problems. The pilot-testing will continue; and if no new issues arise, MCSO will introduce the interface across the organization.

In the meantime, EIU and BIO personnel have pulled together data to conduct analyses, audits, and inspections. As we have noted above, these audits provide invaluable information about the activity of deputies and supervisors. We have also argued that when BIO audits and inspections note deficiencies, merely sending out Action Forms to command staff is insufficient to promote positive changes in the organization. In response, BIO and EIU staff worked to incorporate these Action Forms into Blue Team so that they are more easily transmitted – and, more importantly, trackable. EIU has also proposed to set alerts for supervisors who repeatedly fail to use the EIS tools as directed in policy. This should improve accountability across the organization. We will evaluate these changes to the system as they are introduced. EIU and BIO have repeatedly proposed solutions to problems discovered as a result of the ongoing audits and reports they produce.

EIU and BIO personnel have also actively sought technical assistance over the past several months. In May 2016, we provided MCSO with recommendations about how to conduct monthly, quarterly, and annual analyses. In August 2016 and January 2017, MCSO requested assistance in developing several of these tools. MCSO published the first of these monthly TraCS reports in March 2017. While there are still two benchmarks that are not included in this report, it is the most complete monthly evaluation MCSO has been able to produce in over one year. MCSO advises that it can complete this project prior to the initiation of EIS and Supervisory Training during the summer of 2017.

EIU personnel have incorporated the alert investigation process by District supervisors into the Blue Team system. This has established a more transparent and accountable process for tracking behaviors that might be problematic. The findings from these investigations require approval from several levels of command before they are closed. As noted above, while EIU has provided more attachments (i.e., IRs, citations, BWC recordings) to these alerts, we still find that substantial numbers of supervisors are not adequately explaining what investigations they conducted and why they have closed these investigations. Moreover, only a small number of command staff actually returns these investigations to line supervisors for further explanation. In response, EIU developed a supervisor checklist to accompany the alert: Attachment B, to GH-5 (Early Identification System). This checklist should help ensure that all necessary information is completed to initiate action or close the investigation. We are optimistic that this will alleviate the problems observed in the past. Both EIU and BIO have been receptive to our concerns and taken the initiative to ameliorate these issues.

***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.*

**Phase 1:** In compliance

- GH-5 (Early Identification System), most recently amended on March 24, 2017.

**Phase 2:** Not in compliance

MCSO had placed training curriculum development for EIS on hold several times due to the major revisions needed for GH-5 (Early Identification System). Now that the policy has been published, MCSO has produced the latest draft of the training curriculum. In addition, EIS and Supervisory Training was a major topic of several meetings during our April 2017 site visit. There was some concern raised during our April site visit that there should be more practical exercises for supervisors in using EIS, rather than an introduction to EIS itself. However, EIU personnel voiced the opinion that because this is the first major training for EIS, the curriculum must bring everyone to the same level of knowledge and proficiency. MCSO will use practical examples to explore supervisory responsibilities where they would serve the most useful purpose. We will continue to work with MCSO in the development of this training. The anticipated delivery of training is July 1-September 30, 2017.

***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 amended on March 24, 2017.

**Phase 2:** Not in compliance

In the absence of comprehensive training EIU, BIO, and individual supervisors have demonstrated the ability to conduct comparative analysis of deputies and Districts employing the traffic data incorporated into EIS. EIU has routinely conducted monthly analyses looking for racial bias and profiling. While informative, these analyses have resulted in very few alerts being sent for further investigation by supervisors. We have been critical of these analyses and reports for well over one year. In response, MCSO requested technical assistance in both August 2016 and January 2017 to develop a more comprehensive monthly analysis that incorporates key benchmarks from Paragraph 67. In March 2017, EIU published the monthly traffic stop report that included nine of the 11 benchmarks required by Paragraph 67. We provided comments and requested clarifications on this report. For example, the March report indicates that 125 alerts were generated from the monthly TraCS analysis, but does not break these down by individual benchmarks. EIU anticipates that all 11 benchmarks will be included in subsequent reports.

During our January 2017 site visit, we also discussed the quarterly reports, which have not yet been issued. All Parties commented on the proposed format of the report. The methods for the first quarterly report will mirror those included in the Second Annual Report. Once that is published, we will discuss what modifications might make sense to ensure that each report is distinctive and useful for the organization as a whole. However, in April 2017, MCSO notified us that deputies' work assignment locations have not been routinely updated since they were entered into EIS during its development. Several analyses rely on this piece of information. As a result, both the annual and quarterly analyses will have to be redone.

BIO conducts numerous audits and inspections relevant to this and other Paragraphs, such as those covering Supervisory Notes and the review and discussion of traffic stops. When BIO finds deficiencies, BIO sends out Action Forms to District command staff through email. Our repeated concern was that these email exchanges could not be included in EIS, and some issues and remedies might not be easily tracked. In response, EIU and BIO created an Action Form process within the Blue Team software. In Blue Team the Action Forms, and the associated remedies, can be tracked and repeated deficiencies of particular supervisors can be more easily assessed and addressed. Briefing Board 17-18, published April 4, 2017, announced these changes throughout the organization. We will evaluate this change in our upcoming site visits.

We also routinely review a random sample of alert investigations each month. Even though EIU now provides all the necessary documentation through attachments in these alert investigations, we find that about half of the supervisors fail to use this documentation to support their discussion of the issues involved in the alert investigation. More importantly, we have found that very few command staff who review these investigations have recognized the inadequacies and sent them back for further review. In response, EIU took the initiative to develop a checklist that supervisors and command staff must use in alert cases: Attachment B for GH-5 (Early Identification System). We will evaluate how this checklist impacts the closure of alert cases in the future.

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 conducts monthly analysis looking for racial bias and profiling in accordance with Paragraphs 65, 66, 67 and 74. Over the past year, we have been critical of the thresholds that EIU was using in these monthly reports. EIU requested two technical assistance meetings seeking input on alternatives they were investigating for these monthly reports. In March EIU produced a monthly report indicating the use of nine of the 11 benchmarks prescribed in Paragraph 67. We have noted that while this report shows that 125 alerts were set as the result of the TraCS analysis, it remains unclear how these 125 alerts are spread across the nine benchmarks. We will continue to work with MCSO to improve this report and finalize the last two benchmarks. In addition, MCSO discovered that a critical measure included in the annual and quarterly data analyses – the deputy assignment – had not been routinely updated since 2015. The proportion of traffic stops impacted by this remains under investigation. MCSO developed a way to resolve this problem for all analyses affected. While this requires that the annual and quarterly analyses be reissued, it also prompted MCSO to create a more rigorous data validation protocol. MCSO is convening key personnel from critical units that handle the data to develop a protocol that should ensure more accountability in the process. We will evaluate these changes as they are presented.

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." The publication of GH-5 (Early Identification System), on March 24, 2017, provides significant direction for employees and supervisors alike to understand what type of behaviors will be viewed as problematic. EIU collects a host of indices electronically that most individual supervisors would never be able to track themselves. Supervisors are directed to actively oversee their subordinates' performance through mechanisms such as the EIS Dashboard, where they can not only determine if an employee has reached a threshold, but can track how close the employee may be to the myriad of thresholds and check in with the employee before a trigger event occurs. Our review of the Supervisory Notes suggests that very few supervisors are trained to recognize what types of actions might be perceived as problematic when looking at individual entries. It is crucial for MCSO to develop examples of these in the upcoming EIS training.

MCSO also began using two new fields in TraCS on June 1, 2016. The review field allows supervisors to note when they verified that the traffic stop forms of their subordinates include all the appropriate information in the correct boxes. This review, by policy, must occur within 72 hours. Recent analyses by BIO suggest that supervisors do not always meet this requirement. Upon discovery of such deficiencies, BIO previously sent out Action Forms through email to command staff in the Districts. The response of commanders was varied. As a result of our critique BIO and EIU developed an Action Form process in Blue Team. This was introduced to employees via a Briefing Board in April 2017. We will evaluate whether this new process leads to more effective supervision.

As noted in Paragraphs 69, 70, and 81.a., we have been critical of EIU's monthly analyses seeking racial bias and profiling. In March 2017, EIU produced a monthly report that included nine of the 11 benchmarks described in Paragraph 67. EIU indicated that 125 alerts were set as the result of these benchmarks, but it did not specify which benchmarks accounted for the alerts. We requested clarification and will evaluate these in future quarterly status reports.

MCSO has also been working with CI Technologies on an interface between remote databases that store information on arrests, investigatory stops, and the like. MCSO pilot-tested this interface in District 1. Several anomalies arose regarding the transfer of documents to the appropriate supervisors for review and approval. In response, MCSO made several modifications; pilot-testing continues. MCSO advises that the interface will be fully operational before EIS or Supervisory Training begins in the summer of 2017. Once in place, the EIU will have to develop a strategy to analyze these fields in much the same way as EIU has compared citation rates and passenger contacts.

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." BIO added the bi-monthly review of EIS data to the monthly "Supervisory Note Inspection Report." The January 2017 report of December 2016 data was the first time this has been included in the Supervisory Note report. During this first month of tracking, the supervisor compliance rate was 69%. By March 2017, the report indicated a 97%

compliance rate. BIO routinely sends out Action Forms to Districts in which the supervisors failed to document these reviews. We have been critical of the emailing of BIO Action Forms in the past. In response, EIU and BIO have incorporated Action Forms into the Blue Team process. This affords an additional level of accountability into the system, as well as the ability to track the activity of individual supervisors should the need arise. We will evaluate these processes as they are established.

MCSO is not 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." MCSO published GH-5 (Early Identification System) on March 24, 2017. Most significant for this Paragraph is the development of Appendix B "Early Identification Alert Response Form." This form provides a template for supervisors to follow while conducting an alert investigation. This form requires the supervisor to note when an intervention is enacted and what the outcome of the intervention was. This form will be saved within EIS and can be searched and tracked for future reference. We will evaluate the implementation of this form in future quarterly status reports.

MCSO is not in compliance with the Subparagraph.

Paragraph 81.e. requires MCSO's EIS protocols 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."

The current versions of GC-17 (Employee Disciplinary Procedure) 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, the newly published GH-5 policy 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. In addition, the form requires supervisors to note the type of intervention they are recommending for a deputy, when the intervention occurred, and an evaluation of the intervention outcome. This form will be searchable in EIS and available for future investigations. In addition, these forms must go through the chain of command and can be returned to supervisors for additional processing, if necessary. We will evaluate how well supervisors use these new intervention tools.

GH-5 (Early Identification System) requires that each incident of potential bias-related contact result in an alert investigation. In the March alert report, EIU provided documentation from one traffic stop that potentially met this requirement. The traffic stop originated as a result of a potential stolen vehicle investigation. During the encounter, the driver gave the deputy false personal information. Based upon the Incident Report and the attached documents, we found no reason to suspect improper activities on the part of the deputy involved.

MCSO is not 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." MCSO took this into account in GH-5 (Early Identification System), which was published on March 24, 2017. EIU has drafted an EIU Operations Manual following the publication of GH-5. The EIU Operations Manual includes directions for this Subparagraph, including the consideration of an employee's assignment in setting thresholds. However, training to the policy has not yet occurred.

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" and "Command Staff Responsibility" sections of GH-5 (Early Identification System). Our review of Districts 1 and 3 during our April site visit showed that command staff in these Districts are aware of this requirement and have acted accordingly when transfers have occurred. We note, however, that the command staff in these Districts are relatively new to their assignments. We requested, and were assured, that EIU will incorporate this into the EIS and Supervisory Training set to commence during the summer of 2017.

MCSO is not 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." BIO conducts monthly audits of Patrol Supervisory Notes and quarterly inspections of Incident Reports to assess whether supervisors are adequately using EIS supervisory tools. We have noted in several Paragraphs the fluctuating use of EIS tools by supervisory staff. EIU and BIO have now incorporated the BIO Action Forms into the Blue Team software. This was announced to employees through a Briefing Board on April 4, 2017. We will evaluate how effectively this works in upcoming reports. Our concern has been that the email process previously employed did not allow for repetitive problems to be easily recognized. The new process should allow BIO and EIU to not only track the forms but to identify particular supervisors who have repeated deficiencies. These are both commendable improvements.

We anticipate that the completion of training to EIS in September 2017 should improve the performance of supervisors.

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. Further, we regularly inspect facilities during our site visits. During our April 2017 site visits to Districts 1 and 3, we found that each District maintained the security of paper VSCFs in a locked file cabinet.

MCSO is in compliance with this Subparagraph.

MCSO is meeting some requirements of Paragraph 81: evaluation of supervisory use of EIS; search functions within EIS; and the ability of EIU and BIO to conduct monthly analyses on existing data. However, MCSO also needs to attend to the areas where it falls short: the development of statistically grounded tools to investigate racial bias and profiling; assessment of the effectiveness of interventions; and evaluation of comparative analytic methods that do not rely upon arbitrary thresholds. Many of these issues are addressed in the EIS Project Plan that was first published in December 2016. We have now received the fourth revision of the Project Plan. Each version shows MCSO's progress, as well as the limitations that it has yet to overcome. Moreover, MCSO has recognized that it must improve its data-handling procedure and has convened a team of critical units to develop a rigorous protocol for all persons or units responsible for handling data that is necessary for the effective evaluation of the organization as a whole. When necessary, MCSO has also sought out technical assistance for both supervisory intervention processes related to the Annual Report and methodological input to be used in the monthly traffic analyses. We are satisfied that MCSO is committed to improving all aspects of EIS that the agency can control. We will continue to work with MCSO in developing supervisory processes that meet the requirements of the Order.

## 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:*

***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.*

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

- GC-17 (Employee Disciplinary Procedure), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

#### **Phase 2:** In compliance

During our April site visit, we met with the Deputy Chiefs of Patrol and other MCSO command staff regarding supervision and compliance with this Paragraph. Whereas the Patrol function was previously headed by a Deputy Chief, Patrol areas have now been divided into East and West, each headed by a Deputy Chief. This is a positive change, as it will lessen the span of control at the Deputy Chief level, and should be conducive to increased command review.

As stated in our last report, MCSO has implemented all the enhancements to the Patrol Activity Logs (PALs). From our discussions with supervisory personnel, the feedback as to the usefulness of the PALs has been positive. The Patrol Activity Log was a crucial management tool that had been missing. Supervisors now have at their disposal a mechanism that assists them in evaluating productivity and performance. MCSO informed us that Non-Traffic Contact Forms are almost ready for implementation in TraCS. The full deployment is pending finalization of EA-3 (Non-Traffic Contact).

During our January site visit, the Deputy Chief of Patrol advised us that MCSO was conducting a workforce allocation study. During our April site visit, we requested an update. MCSO informed us that the project had not been completed as envisioned, and that it was considering a new resource allocation study.

Supervisors are improving their reviews of the work product of their subordinates and addressing deficiencies. There are still areas that supervisors need improvement on, specifically in reviews of traffic stops. We have discussed this in detail in Paragraphs 90 and 91. Nevertheless, as it pertains to the requirements of this Paragraph, there has been improvement.

During our April 2017 site visit, we interviewed supervisors and commanders from three Districts to determine if there was compliance with MCSO policies and the requirements of the Order. We met with the District 1 Commanding Officer, a lieutenant, and a sergeant. The hours of operation for the District office are Monday through Friday, 08:00 a.m.-5:00 p.m. The District 1 Commanding Officer had been assigned to the District three days before our site visit, and as expected, was not yet familiar with District issues and crime statistics. The lieutenant we interviewed was knowledgeable about District operations and provided satisfactory responses to our questions.

MCSO informed us that District 1 had assigned a deputy full-time to the Town of Guadalupe, as part of the District's community engagement effort. District 1 recently held a community outreach event in Guadalupe, with the assistance and cooperation of Guadalupe elected officials, to promote understanding and bring law enforcement and the residents of that community closer together. The residents of Guadalupe have historically had a strained relationship with MCSO, and in the past, have expressed numerous concerns regarding MCSO's law enforcement activities. It is commendable that the District 1 staff has taken a step toward the betterment of that relationship. District 1 also has a supervisor and a deputy who are involved in community engagement, part-time, in East Mesa. In addition, command staff are encouraging deputies to visit the local elementary schools, in between calls for service, to interact with the students during lunchtime and recess. These are steps in the right direction.

MCSO appears to have resolved past issues with Internet connectivity. There were no concerns expressed with regard to the downloading of videos or documents. The District 1 office had instructional placards, in English and Spanish, informing the public on how to file complaints. Pamphlets regarding complaint procedures, in both English and Spanish, were also available at the District office. The pamphlets were also found in the Patrol vehicle we inspected.

We met with the District 7 Commanding Officer and a supervisor. District 7 is a contract city and operates the same hours as the Town of Fountain Hills: Monday-Thursday, from 0700 to 1700. District 7 deputies operate on a hybrid schedule. Due to contract requirements and resource limitations, the typical work schedule combines two eight-hour workdays and two 12-hour workdays. The supervisor-to-deputy ratio is generally 1:4 or less. The District 7 Commanding Officer was very knowledgeable about crime statistics and quality of life issues. As to community engagement, Fountain Hills has a community outreach program targeting youth; the program is called Midnight Madness.

The District Commanding Officer advised us that public complaints have decreased. Body-worn camera video-recordings have been successfully used to resolve a number of complaints. District 7 supervisors have not experienced any problems downloading video-recordings, although Internet/Intranet traffic still has to be routed through MCSO servers in the main office.

The District 7 Commanding Officer stated that administrative investigations are still taking up a significant amount of time. Supervisors are becoming more efficient at investigations and completing them in less time, but the chain of command reviews still add time to the process. PSB's liaison program has been very helpful in instructing and directing supervisors in administrative reviews.

With regard to BWC operation, deputies are becoming more adept at operating the cameras, and problems with late activation have decreased. The District has experienced some problems with cords breaking or malfunctioning, and batteries not lasting the entire shift. We learned that the program administrator has been replacing faulty parts as needed, so while there are hardware issues, these issues have not adversely impacted the operation of the BWCs. In our meeting with District 7 personnel, we discussed the issues related to the misidentification of Latino drivers in Vehicle Stop Contact Forms. The District 7 staff were aware of the concern; the issue has been a topic of discussion at staff meetings.

We met with the District 3 Commanding Officer and staff. The District 3 hours of operation remain unchanged. The District office is open Monday-Friday, from 7:00 a.m.-4:00 p.m. District 3 deputies operate on a 4/10 schedule, with overlapping shifts. The District 3 Commanding Officer has been in the District since mid-January. He had general knowledge of crime statistics and quality of life issues, but as he was newly assigned, he lacked the historical perspective of previous commanders. The most prevalent crime in the District is fraud involving the elderly, followed by burglaries. Several key members of the staff are relatively new to the District, but appeared knowledgeable and engaged. We discussed past compliance issues that have occurred in District 3, and the new staff were aware of the problems and appeared committed to addressing the issues and preventing a reoccurrence.

We reviewed a representative sample of 70 Incident Reports for January 2017, for the randomly selected date of January 13, 2017. We found no significant issues, as 69 of the 70 Incident Reports were reviewed and memorialized within the required seven days, and all of the nine vehicle crash reports were reviewed within the required timelines. All arrest reports were reviewed within the required 72 hours. We conducted a quality check on a 10% random sample of the reports we reviewed; we found no significant deficiencies.

We reviewed a representative sample of 88 Incident Reports for February 2017, for the randomly selected date of February 14, 2017. One of the 88 Incident Reports was not turned in within required timelines, and in five of the Incident Reports, we could not verify the date of supervisory review. All Arrest Reports were reviewed and signed by supervisors within the required 72 hours. We conducted a quality review on a 10% random sample of the reports we reviewed, and did not find any significant deficiencies.

We reviewed a representative sample of 87 Incident Reports for March 2017, for the randomly selected date of March 7, 2017. All 87 reports were submitted on time. Eighty-five of 87 Incident Reports were reviewed and signed by supervisors within the required time constraints. Twelve of 13 Arrest Reports were reviewed and signed by supervisors within 72 hours. MCSO provided us with a printout of vehicle crash reports that documented supervisory review and approval; all were reviewed and approved within the required timeline. We conducted a quality review on a 10% random sample of the reports we reviewed, and other than spelling errors, did not find any significant deficiencies.

Paragraph 83 requires that supervisors ensure that deputies actively work to engage the community to increase public trust and safety. In addition to reviewing documentation provided by MCSO regarding the agency's community policing efforts, we reviewed Patrol Activity Logs to verify that these activities are occurring. Our reviews have demonstrated that most Patrol deputies have included sufficient details on CAD pertaining to community policing events.

For each month of the quarter, the Monitoring Team selected a supervisor and a squad of deputies. We requested several documents, including Patrol Activity Logs, for each deputy. We reviewed PALs for each month of the quarter to assess if the PALs were turned in by the end of each shift, and if supervisors had been reviewing each PAL. For January, all 31 deputies' Patrol Activity Logs had documentation of supervisory review; and all seven supervisors' Patrol Activity Logs had documentation of command level review. For February, we reviewed Patrol Activity Logs for 30 deputies and seven supervisors. All deputies' PALs had documentation of supervisory review, and sergeants included documentation of command level review. For March, we reviewed Patrol Activity Logs for 35 deputies and seven supervisors. All deputies' PALs had documentation of supervisory review, and all sergeants' PALs included documentation of command level review.

We also reviewed PALs to determine if supervisors provided on-scene supervision, and if those supervisor-deputy contacts were documented. For the sample dates chosen in January, there were a total of 39 field contacts between supervisors and deputies. For the sample dates chosen in February, there were a total of 18 recorded supervisor-deputy field contacts. For the sample dates chosen in March, there were a total of 46 recorded supervisor-deputy field contacts.

Our reviews for this reporting period found that supervisors have been reviewing their subordinates' work products, as it pertains to his Paragraph, with consistency and timeliness. We have noted an increase in Blue Team documentation of deficiencies and corresponding corrective actions. MCSO has completed the enhancements to the Patrol Activity Logs, and we have received favorable feedback from supervisors regarding their usefulness. In our District visits, and in our discussions with Patrol commanders, we have emphasized the need for supervisors to be active in the field, and we have noted positive results. Through documentation provided in the Patrol Activity Logs, we have noted the increase in supervisor-deputy contacts in the field.

**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.*

**Phase 1:** In compliance

- GB-2 (Command Responsibility), most recently amended on February 1, 2017.

**Phase 2:** In compliance

To verify Phase 2 compliance with this Paragraph, we reviewed monthly rosters and shift rosters for the first quarter of 2017. We also reviewed the January, February, and March 2017 Patrol Bureau shift roster inspection summaries, which discuss the results of BIO's examination of every MCSO shift roster during those months to verify that shifts did not exceed the 1:10 supervisor:deputy ratio. The BIO inspection summary dated February 7, 2017, noted that there was a 99.91% compliance rate in January. The BIO inspection summary dated March 30, 2017 noted that the compliance rate was 99.76% in February. The BIO inspection summary for March noted no deficiencies, for a 100% compliance rate.

During this reporting period, consistent with our methodology, for January we reviewed a sample of shift rosters from Districts 1 and 2; for February, we reviewed a sample of shift rosters from Districts 3 and 4; and for March, we reviewed a sample of shift rosters from Districts 6 and 7, and Lake Patrol. Monthly and daily rosters showed that deputies were assigned to one single consistent supervisor and that supervisors were generally assigned no more than eight deputies. All Districts are completing monthly rosters.

District 1 had one day in January where one squad listed a ratio of 1:10, and District 2 had two days where one squad listed a ratio of 1:9. With the exception of these three dates, both Districts have maintained a supervisor deputy ratio of 1:8 or less. With the exception of one day where the supervisor-deputy ratio was 1:9, District 3 has maintained a ratio of 1:8 or less. District 4 has maintained a ratio of 1:6 or less. District 6 has maintained a supervisor:deputy ratio of 1:6 or less, and District 7 has maintained a supervisor:deputy ratio of 1:4 or less. Lake Patrol has maintained a supervisor:deputy ratio of 1:7 or less.

**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.*

**Phase 1:** In compliance

- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In compliance

Consistent with our methodology, 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 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. MCSO had previously requested to submit the documentation of supervisor-deputy discussions in the form of a spreadsheet. The documentation was moved from Blue Team to TraCS, and supervisors are now documenting the discussion of traffic stops by applying the “Discussed with Deputy” option.

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 changes every month, so to obtain complete records for each deputy, MCSO holds the submission until all the information requested for the month is complete. Accordingly, the documentation of supervisory-deputy discussions of traffic stops is submitted 30 days retroactively.

For January, MCSO submitted the December traffic stops for each deputy, by District. The total number of traffic stops for each District were: District 1, 17; District 2, 16; District 3, 52; District 4, 17; Lake Patrol, 73; District 6, 89; and District 7, 66. There were a total of 330 traffic-related events in December for all Districts, and sergeants discussed 311 of those with the deputies who conducted them, for a compliance rate of 94%.

For February, MCSO submitted the January traffic stops for each deputy, by District. The total number of traffic stops for each District were: District 1, 25; District 2, 33; District 3, 23; District 4, 28; Lake Patrol, 11; District 6, 26; and District 7, 25. There were a total of 171 traffic-related events in January for all Districts, and sergeants discussed 169 of those with the deputies that conducted them, for a compliance rate of 99%.

For March, MCSO submitted the February traffic stops for each deputy, by District. The total number of traffic stops for each District were: District 1, 40; District 2, 14; District 3, 82; District 4, 7; Lake Patrol, two; District 6, 17; and District 7, 55. There were a total of 217 traffic-related events in February, and sergeants discussed 210 of those with the deputies who conducted them, for a compliance rate of 97%.

**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.*

**Phase 1:** In compliance

- GB-2 (Command Responsibility), most recently amended on February 1, 2017.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed a sample of daily shift rosters for the three months of the reporting period. For January, we reviewed Districts 1 and 2; for February, we reviewed Districts 3 and 4; and for March, we reviewed Districts 6 and 7, and Lake Patrol. Our reviews of monthly and daily rosters indicated that deputies were assigned to and worked the same schedules as their supervisors.

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 January, we requested PALs for seven sergeants and 31 deputies, which we reviewed. We noted a total of 39 field supervisor-deputy contacts on the deputies' PALs for the selected dates. For February, we requested PALs for 30 deputies and seven sergeants. We received and reviewed all requested PALs, and noted a total of 18 field supervisor-deputy contacts on the deputies' PALs. For March, we reviewed PALs for 35 deputies and seven sergeants; and noted a total of 48 field supervisor-deputy contacts on the deputies' PALs for the selected dates.

We recognize MCSO's continuing efforts to keep the supervisor-to-deputy ratio at or below 1:8. We also acknowledge that supervisors have made significant efforts to increase their on-scene presence.

**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-17 (Employee Disciplinary Procedure), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** Not in compliance

Consistent with our methodology, we requested the names of all deputies and supervisors who were evaluated during this reporting period. From the lists of employees submitted, we requested a representative sample. We received and reviewed performance evaluations submitted for eight deputies and 12 supervisors who received evaluations in January 2017. Six of the eight deputies' EPAs reviewed were of acceptable quality; two were very brief and did

not document past performance with sufficient detail. Three of the EPAs were well-written and contained details to support the ratings. One of the 12 supervisors' EPAs contained all of the required elements and documented specific behaviors that supported the ratings. Two supervisors had no direct reports. All 12 of the supervisors' EPAs rated the supervisors on the quality and effectiveness of their supervision. Only two of the 12 supervisory appraisals included comments related to the supervisors' ability to identify and respond to misconduct, and two of the 12 rated the supervisor on the quality of their reviews.

We received and reviewed performance evaluations submitted for seven deputies and 17 supervisors who received evaluations in February 2017. Six of the seven deputies' EPAs reviewed were of acceptable quality; one was very brief and did not document past performance with sufficient detail. None of the 17 supervisors' EPAs contained all of the required rating dimensions. Three of the supervisor's EPA's were of excellent quality; however, they did not address all the required rating dimensions. One supervisor had no direct reports. We noted that some of the EPAs submitted by higher level command personnel contained brief, general comments and did not address specific rating dimensions. All 17 of the supervisors' EPAs rated the supervisors on the quality and effectiveness of their supervision. Only two of the 17 supervisory appraisals included comments related to the supervisors' ability to identify and respond to misconduct, and four of the 17 rated the supervisor on the quality of their reviews.

We received and reviewed performance evaluations submitted for seven deputies and 12 supervisors who received appraisals in March 2017. Four of the seven deputies' EPAs reviewed were well done and contained documentation to support the ratings. Two EPAs were acceptable, and one had brief comments that were not very descriptive of the deputy's performance. Six of the supervisors' EPAs were very well-written, and the ratings were supported by specific comments – but only two EPAs addressed all required dimensions. All of the supervisors' EPAs rated supervisors on the quality and effectiveness of their supervision. Five of the 12 EPAs rated the supervisors on the quality of their reviews. Two of the 12 EPAs rated supervisors on their ability to identify and respond to misconduct.

We continue to note that commanders have not consistently evaluated the quality of supervisory reviews and supervisors' ability to identify and respond to misconduct in EPAs. These issues will be addressed with the implementation of the new EPA format. EPA training began in March 2017 and was completed by the end of June. We have heard very positive feedback from District personnel who have attended the training.

**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.*

**Phase 1:** In compliance

- Memorandum from Executive Chief Trombi, dated January 6, 2015.
- Memorandum from Sheriff Arpaio, dated February 12, 2015.
- Special Investigations Division Operations Manual, published May 15, 2015.

**Phase 2:** In compliance

MCSO removed the enforcement of human smuggling laws from the mission statement of the Anti-Trafficking Unit, and no other specialized units include this mission as part of their duties. 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.

During our April site visit, MCSO advised us that the Anti-Trafficking Unit had been renamed the Fugitive Apprehension Investigative Team (FAIT). We reviewed a copy of the updated Special Investigations Division's Operations Manual, and the mission and objectives of FAIT are in compliance with this Paragraph.

For January, February, and March 2017, we received lists containing all incidents involving MCSO arrests and criminal citations. For each month, we requested a random sampling of arrests and criminal citations. In total, we reviewed 73 incidents involving arrest and 78 incidents involving criminal citations. We also reviewed a random sample of 245 Incident Reports for this reporting period. We found no evidence of enforcement of immigration-related laws.

**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.*

**Phase 1:** In compliance

- EA-11 (Arrest Procedures), most recently amended on June 15, 2016.

- GC-17 (Employee Disciplinary Procedure), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.
- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** In compliance

We requested to inspect all reports related to immigration status investigations, any immigration-related crime, or incidents or arrests involving lack of identity documents. The Incident Reports submitted covered the period of January 1-March 31, 2017. Any incident wherein a deputy requests supervisory 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 being investigated by MCSO, falls under the reporting requirements of this request. No cases involving immigration status investigations or immigration-related crime were reported.

In our last report, we discussed an incident involving a traffic stop on October 15, 2016, in which MCSO requested the assistance of Customs and Border Patrol (CBP) to assist with Spanish-English interpretation. A CBP agent responded and assisted with the interpretation, but the driver was subsequently taken into custody by CBP and deported. There were several issues of concern identified with this stop, which resulted in a PSB investigation. We will report on the outcome once the investigation is completed and we have had an opportunity to review it.

For this reporting period, MCSO submitted four incidents as responsive to this Paragraph. We reviewed all of them, and found no other issues of concern. One incident involved an individual who was driving without a valid license. Two subjects were arrested for warrants. One incident was related to the fraudulent use of a Social Security Number.

We also received a booking list and a criminal citation list for each month of the reporting period. From each list, we selected a 10% random sample of incidents. In total, we reviewed 73 incidents resulting in arrest and 78 incidents involving criminal citations. All documentation we reviewed during this reporting period indicates that MCSO is in compliance with this Paragraph.

***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 June 15, 2016.

**Phase 2: Not in compliance**

We reviewed 35 incidents involving traffic stops for January 2017. There were two arrests and 16 citations issued for speeding. Two drivers were cited for driving with suspended licenses. Twenty-three of the stops resulted in citations, and 12 resulted in warnings. All 35 Vehicle Stop Contact Forms we reviewed noted the serial number, date, and time of supervisory review. Twenty-nine of the 35 VSCFs were reviewed within the required 72 hours. For January, MCSO submitted a spreadsheet documenting each VSCF by District, for a total of 270 VSCFs. We reviewed the data for January, and the compliance rate for timely supervisory reviews of VSCFs was 90%. We reviewed BIO Audit BI2017-0018, which stated that MCSO had a compliance rate of 92.89%. Our findings indicate a lower compliance rate.

We reviewed 35 incidents involving traffic stops for February 2017. Fifteen of the 35 traffic stops were related to speeding. Four citations were issued for expired license plates or suspended registrations. The remaining violations were issued for minor moving traffic infractions. There were no criminal citations or traffic-related arrests. For February, MCSO submitted a spreadsheet documenting each VSCF by District, for a total of 143 VSCFs. We reviewed the data, and the compliance rate for timely supervisory reviews of VSCFs in February was 97.9%. We reviewed BIO Audit BI2017-0032, which concurred with our findings.

We reviewed 35 incidents involving traffic stops for March 2017. Nineteen of the 35 traffic stops were related to speeding violations. Three citations were issued for expired license plates or suspended registrations. Out of 35 traffic stops, one resulted in a criminal citation. All of the 35 stops had Vehicle Stop Contact Forms, and supervisors had reviewed all VSCFs. For March, MCSO submitted a spreadsheet documenting each VSCF by District, for a total of 242 VSCFs. We reviewed the data, and the compliance rate for timely supervisory reviews of VSCFs in March was 100%. We reviewed BIO Audit BI2017-0045, which concurred with our findings.

The collective average for the first quarter of 2017 was 95.96% in terms of supervisors conducting reviews of VSCFs within 72 hours. However, we found several deficiencies in VSCFs that have not been identified or addressed by supervisors. We reviewed several VSCFs where deputies have indicated search of passengers, when no searches have taken place. We verified that no searches have taken place through reviews of BWC recordings. In addition, we continue to note VSCFs where Latino drivers have been misidentified as white. We have noted an increase in Blue Team notes pertaining to corrective actions. Supervisors have been more attentive and taking action on incorrect or inaccurate information, but some important deficiencies are still slipping through the cracks uncorrected.

**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 June 15, 2016.
- EB-1 (Traffic Enforcement, Violator Contacts, and Citation Issuance), currently under revision, though the proposed revisions do not affect the language pertaining to this Paragraph.

**Phase 2:** Not in compliance

We reviewed traffic stop data reported by MCSO for its January inspection. The Monitoring Team randomly selected 35 traffic-related events, which BIO then audited for compliance. Of the 35 traffic-related events, MCSO reported that 27, or 77%, had no deficiencies. This was a 6% decrease from December's compliance rate. We reviewed the same traffic-related events, independent of BIO's audits, as part of our compliance assessment of Paragraphs 25 and 54. We reviewed a spreadsheet documenting each VSCF by District, for January, to determine if supervisors were reviewing VSCFs within the required 72 hours. We reviewed data for 270 traffic stops, and determined that supervisors had completed timely reviews in 90% of the cases.

We reviewed the reported corrective actions for January 2017. MCSO submitted 56 Supervisory Notes. Seventeen of the Supervisory Notes had no identifiable corrective actions. We determined that 39 of the 56 were actual corrective actions related to traffic stops. Fourteen of the corrective actions were related to the use of body-worn cameras; in most instances, the problems stemmed from late activations or wrong positioning of the cameras. Eleven of the Supervisory Notes were related to incorrect or missing information on VSCFs, citations, or written warnings. Ten of the issues identified were related to procedural errors or deputy safety during traffic stops. Three Supervisory Notes were related to equipment issues, and one was generated for a Patrol Activity Log deficiency.

We reviewed traffic stop data reported by MCSO for its February inspection. The Monitoring Team randomly selected 35 traffic-related events, which BIO then audited for compliance. Of the 35 traffic-related events, MCSO reported that 27, or 77%, had no deficiencies. The compliance rate was the same as in January. BIO found six open, non-validated forms for this reporting period. Each form is required to be validated. We reviewed data documenting each traffic stop by District, for February, to determine if supervisors were reviewing VSCFs within the required 72 hours. We reviewed 143 VSCFs and determined that supervisors had completed timely reviews in 97.9% of the cases.

For February, MCSO reported 90 corrective actions. We reviewed all Supervisory Notes and determined that 76 of the 90 were actual corrective actions; there were no corrective actions identified in 14 of the Supervisory Notes. Of the 76 relevant actions, 35 were related to body-worn camera and recording issues: failure to activate the BWC; late activation of the BWC; turning off the camera before the event was concluded; or poor positioning of the BWC. Thirteen were related to inaccurate or missing information on VSCFs, citations, or written warnings. Seventeen corrective actions were related to procedural or policy violations. Two corrective actions were related to deputy safety. One corrective action was related to an error on a Patrol Activity Log, and five Blue Team entries were related to technical malfunctions or system errors. Two Blue Team notes were issued for Detention personnel and were not relevant to this review. We have noted a significant increase in corrective actions, and the level of details documented in Blue Team entries. We infer from this that supervisors are becoming more adept at the review and documentation process, which is encouraging. We noted one supervisor Blue Team entry from District 2 that was a good example of a proactive supervisor documenting a deputy's underperformance and related counseling. We are aware that Patrol supervisors have a number of responsibilities that they must carry out on a daily basis. We recognize this supervisor's effort to fulfill those responsibilities.

We reviewed traffic stop data reported by MCSO for its March 2017 inspection. The Monitoring Team randomly selected 35 traffic-related events, which BIO then audited for compliance. Of the 35 traffic-related events, MCSO reported that 28, or 80%, had no deficiencies – a 3% increase in compliance from February.

MCSO also discovered during its inspection that there were four open, non-validated forms for September in the TraCS system. Each form is required to be validated. BIO recommended that supervisors discuss with their deputies the deficiencies found in VSCFs related to post-stop race/ethnicity. BIO also recommended that supervisors review with their employees the proper method of running license and warrant checks.

For March, MCSO reported 79 corrective actions. We reviewed all Supervisory Notes and 75 of the 79 were documented corrective actions; there were four Supervisory Notes where no corrective actions were noted. Of the 75 relevant actions, 26 were related to body-worn cameras and recording issues: failure to activate the BWC; late activation of the BWC; turning off the camera before the event was concluded; or poor positioning of the BWC. Five were related to inaccurate or missing information on VSCFs, citations, or written warnings. Thirty corrective actions were related to procedural or policy violations. Two corrective actions were related to deputy safety. Two corrective actions were related to errors on Patrol Activity Logs, and seven Blue Team entries were related to technical malfunctions or system errors. Three Blue Team notes were issued for Detention personnel and were not relevant to this review.

We noted one incident wherein a deputy, while conducting a traffic stop, observed the driver of the vehicle making what the deputy thought were furtive movements. The driver kept visual contact with the deputy through the side and rear view mirrors, and at one point appeared to be searching for something in the vehicle. The deputy felt threatened to the point where he drew his weapon and pointed in the direction of the driver. The situation was de-escalated without incident. The supervisor addressed this as a training issue with the deputy, and discussed issues relating to deputy safety and use of force. The supervisor appears to have addressed the matter satisfactorily. We requested a copy of the recording for review.

In another traffic stop, we noted that a Latino driver was stopped for an expired registration. The deputy detected the odor of alcohol on the driver, and inquired if the driver had been drinking. The driver responded that he had been drinking the night before. The deputy also observed, in plain view, a can of beer on the passenger side floorboard. At this point, the driver was detained for suspicion of DUI, and a possible violation of the open alcoholic beverage container law. The driver was frisked for weapons. The deputy examined the can of beer, found it to be unopened, and returned it to the vehicle. After a few minutes of interacting with the driver, the deputy determined that the residual odor of alcohol was caused by the previous night's drinking and the driver was not currently impaired. The driver was issued a citation for expired registration and released. We found that the frisk appeared reasonable and prudent, as it pertained to deputy safety; however, the deputy did not document the Terry Frisk or the plain view search in the VSCF. The odor of alcohol on the driver's breath and a can of beer on the floorboard in the passenger side gave the deputy reasonable suspicion to investigate further. The frisk occurred immediately after the subject was told he was being detained. We know that the deputy had a previous encounter with the driver, evidenced by the interaction between the deputy and the individual. We do not know the circumstances of that encounter, or whether the previous contact influenced the deputy's level of safety awareness. While we understand the concerns with the possibility of illegal searches, the objective of a pat-down is to uncover objects or weapons that could pose a risk to the deputy. After the stop, and before the deputy approached the stopped vehicle, the driver had opened the door and attempted to exit. This prompted the deputy to instruct the driver to remain in the vehicle. Upon approaching the vehicle, the driver reached under the seat, again prompting the deputy to instruct the driver to keep his hands visible. We reiterate that the frisk of the driver appeared to be a reasonable precaution after he was detained for suspicion of DUI and a possible violation of the open alcoholic beverage container law. The frisk of the individual, and the plain view search leading to the inspection of the beer can, were not documented. The BIO inspection noted these deficiencies, as well.

We reviewed a spreadsheet documenting each VSCF by District, for March, to determine if supervisors were reviewing VSCFs within the required 72 hours. We reviewed 242 VSCFs and determined that supervisors had completed timely reviews in 100% of the cases. However, we found several deficiencies in VSCFs that have not been identified or addressed by supervisors. We reviewed several VSCFs where deputies have indicated search of passengers, when no searches have taken place. We verified that no searches have taken place through our reviews of BWC recordings. In addition, we continue to note Latino drivers misidentified as white in VSCFs.

**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:** Not in compliance

- GC-4 (Employee Performance Appraisals), currently under revision.

**Phase 2:** Not in compliance

During our January 2017 site visit, we met with MCSO and received an update on the progress of the new Employee Performance Appraisal protocol and training. We reviewed the EPA lesson plan and returned it to MCSO with comments and suggestions. MCSO advised us that EIS training has been delayed. The EPA course of instruction was started in March 2017, independently of EIS. The projected rollout date for the new EPA format was July 1, 2017.

During our April 2017 site visit, we learned that the EPA training course was underway and expected to be completed by the end of June 2017, as planned. We also received some very positive feedback from Patrol supervisors and commanders who had attended the training. EIS training, which was to start in March 2017, has been delayed.

**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.*

**Phase 1:** In compliance

- EA-11 (Arrest Procedures), most recently amended on June 15, 2016.

**Phase 2:** In compliance

We reviewed a representative sample of 70 Incident Reports for January 2017, for the randomly selected date of January 13, 2017. Sixty-nine of the 70 Incident Reports reviewed were turned in by the end of the shift and reviewed by a supervisor within the required seven days. All Incident Reports involving arrests or criminal citations were reviewed and signed by supervisors within the required 72 hours. All nine vehicle crash reports were reviewed and signed within the required timelines. We conducted a quality review on a 10% random sample of the reports we reviewed. Other than minor spelling errors, we noted no significant deficiencies related to quality.

We reviewed a representative sample of 88 Incident Reports for February 2017, for the randomly selected date of February 14, 2017. Eighty-seven of the 88 Incident Reports were turned in by the end of the shift. On four of the reports, the supervisor signed in acknowledgement of review and approval, but did not date the review. All other reports were reviewed and signed by supervisors within the required seven days. On one Incident Report involving an arrest, we could not determine if the supervisor reviewed and approved the arrest within the required timeline, as the date of review was not listed. All other Incident Reports involving arrest were reviewed and memorialized within the required 72 hours. All 16 vehicle crash reports were reviewed within the required time constraints. We conducted a quality review on a 10% random sample of the reports we reviewed and did not note any deficiencies related to quality.

We reviewed a representative sample of 87 Incident Reports for March 2017, for the randomly selected date of March 7, 2017. All 87 Incident Reports were turned in by the end of the shift. Eighty-five of 87 Incident Reports were reviewed and signed by supervisors within the required seven days. Twelve of 13 Arrest Reports were reviewed and signed by supervisors within 72 hours. MCSO provided us with a printout of vehicle crash reports that documented supervisory review and approval; all were reviewed and approved within the required timeline. We conducted a quality check on a 10% random sample of the reports we reviewed, and noted no significant deficiencies.

***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 June 15, 2016.

**Phase 2:** In compliance

For this reporting period, we received 15 Incident Memorialization Forms (IMFs). Seven IMFs were issued for failure to turn in Incident Reports before the end of the shift. One IMF was generated for an error in the submission of blood results in a DUI investigation. One IMF was generated as a result of a deputy issuing a citation instead of making a physical arrest in a Domestic Violence case. One IMF was generated in an investigation where the deputy did not activate his body-worn camera to record an interview. Three IMFs were issued for a supervisor who went on leave and failed to complete reports. This same supervisor failed to carry out a number of other responsibilities during this reporting period. We discussed this concern with MCSO command staff during our April site visit, and we learned that they are addressing this situation. Two IMFs were generated in February regarding the same deputy, in relation to inaccurate and inconsistent information on two Incident Reports. We requested additional information on one specific incident where the reports generated by the deputy appear to contradict the body-worn camera footage.

We reviewed the Inspections Report for County Attorney Dispositions (2017-0030). BIO reviewed all turndowns by the County Attorney's Office, and found no deficiencies in the 35 Superior Court cases and 27 Justice Court cases it reviewed. Independently, we reviewed the documentation provided by MCSO for this Paragraph, and found no issues of concern. For January, we reviewed 26 Arrest Reports and 20 incidents involving criminal citations. We found one domestic violence Incident Report that was mislabeled as "mutual combat." We found no significant deficiencies in the Arrest Reports reviewed; all had timely supervisory reviews and approvals.

We reviewed the Inspections Report for County Attorney Dispositions (2017-0036). BIO reviewed 190 dismissals by the County Attorney's Office, and found no deficiencies in the 38 combined Superior Court and Justice Court cases it reviewed. Independently, we reviewed the documentation provided by MCSO for this Paragraph. We reviewed 28 Arrest Reports and 28 criminal citations for February and found that all reports contained the necessary information. We found one Arrest Report where the defendant's name was misspelled, and we found other minor spelling and grammatical errors. Overall, there were no significant issues of concern.

We reviewed documents provided by MCSO for March, for cases in which the County Attorney declined prosecution. We reviewed a total of 40 cases and found no issues of concern. For March, we reviewed 19 Incident Reports involving arrest and 30 incidents involving criminal citations. There were no concerns noted with the arrest reports we reviewed, and all were reviewed and approved by supervisors within required timeframes. There were no deficiencies noted with criminal citations, and we verified timely supervisory review on 27 of the 30 incidents.

**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:** Not in compliance

- GC-4 (Employee Performance Appraisals), currently under revision.

**Phase 2:** Not in compliance

We reviewed Employee Performance Appraisals for 41 supervisory and command personnel who received Employee Performance Appraisals during this reporting period. Thirty-nine of the 41 appraisals contained comments related to the quality and effectiveness of supervision. Six of the 41 appraisals contained comments regarding the supervisors' demonstrated ability to identify and effectively respond to misconduct. Eight of the 41 appraisals rated the supervisors on the quality of their reviews. Two supervisors whose Employee Performance Appraisals we reviewed had no direct reports. The quality of supervisory reviews, a mandated area of assessment of the First Order, was added to the revised performance appraisal process. Most of the EPAs for supervisors and commanders that we reviewed included comments and ratings on the quality of supervision, but failed to assess the employees' ability to rate their subordinates' performance. During this reporting period, we noted that some command-level Employee Performance Appraisals were brief and lacked substance. While we understand that command level personnel have different job responsibilities from deputies and first-line supervisors, documentation of job performance should be entered on Blue Team on a consistent basis for all personnel.

MCSO revised GC-4 (Employee Performance Appraisals) to address the requirements of this Paragraph, but the revised policy is still pending publication. During our April site visit, MCSO advised us that EPA training is underway as scheduled, and we have received very positive feedback from MCSO personnel who have attended.

**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 June 15, 2016.

**Phase 2:** In compliance

We requested all Incident Memorialization Forms (IMFs) for this reporting period; MCSO's submission consisted of 15 IMFs.

Of the 15 IMFs, seven were issued for failure to turn in Incident Reports before the end of the shift. One IMF was generated for an error in the submission of blood results in a DUI investigation. One IMF was generated as a result of a deputy issuing a citation instead of making a physical arrest in a domestic violence case. One IMF was generated in an investigation where the deputy did not activate his body-worn camera to record an interview. Three IMFs were issued for a supervisor who went on leave and failed to complete reports. This same supervisor failed to carry out a number of other responsibilities during this reporting period. We discussed this concern with MCSO command staff during our April site visit, and we understand that they are addressing it. Two IMFs were issued in February for the same deputy, in relation to inaccurate and inconsistent information on two Incident Reports. We requested additional information on one specific incident where the reports generated by the deputy appear to contradict the BWC recordings.

***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 March 24, 2017.

**Phase 2:** Not in compliance

During our July 2016 site visit, we met with MCSO and discussed the compliance requirements for this Paragraph. MCSO personnel advised us that they would document the required periodic reviews on Blue Team notes until a more efficient methodology is developed.

During our October 2016 site visit, MCSO advised us that the documentation regarding compliance with this Paragraph is collected in Blue Team, in free-form text, and is not searchable. As part of its September document provision, MCSO submitted a memorandum that stated, "MCSO does not uniformly and consistently collect the requested data. The issue will be addressed in EIS Policy GH-5, which is currently in the review/approval process. MCSO plans on capturing this information as soon as possible." During our January 2017 site visit, MCSO informed us that it had added the functionality to search EIS/Blue Team for specific keywords. This will enable MCSO to search the database for documentation to provide as proof of compliance with this Paragraph.

During our April 2017 site visit, MCSO requested clarification as to the frequency of required EIS reviews. We affirmed the requirements of the Order and advised MCSO that they should be governed by their existing policies. MCSO has directed its personnel, by way of policies GH-5 (Early Identification System) and GB-2 (Command Responsibility), to conduct EIS reviews twice per month for sworn members.

For this reporting period, in January 2017, we noted that supervisors began documenting reviews of deputies' EIS profiles in Blue Team notes. Command review of EIS profiles of supervisory and command personnel began in February 2017. Review of broader pattern-based reports, as required by Paragraph 81.c., and assessments of interventions as required by this Paragraph, has not been sufficiently documented to meet compliance with this Paragraph. MCSO submitted memoranda for this quarter stating, "There is currently no policy in place for the Blue Team notes pertaining to Commander's quarterly review of EIS and assessments of the quality and effectiveness of interventions." The requirement described in Paragraph 81.c is covered in GH-5, under "Command Staff Responsibilities." However, it does not specify that the documentation should be noted in Blue Team. In order to satisfy the quarterly review requirement of broader pattern-based reports, at least one of the entries in Blue Team, during the quarter, should be specific and address whether or not the reviews revealed the presence of any such pattern, and any remedial actions taken.

***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:** Not in compliance

- GC-4 (Employee Performance Appraisals), currently under revision.

**Phase 2:** Not in compliance

During our October 2016 site visit, we received an update on the progress of the new Employee Performance Appraisal process. At that time, MCSO advised us that it had approved the EPA form, and revised GC-4 to comply with the requirements of the Second Order. Subsequent to our site visit, MCSO provided us with a timeline for completion of the EPA process. MCSO advised us that the plan was to pair the EPA course of instruction with EIS training; and scheduled Train-the-Trainer sessions for March 6, 2017, for both EIS and EPA. MCSO scheduled the formal instruction process for March 20, 2017. MCSO command staff anticipated that they would provide instruction to over 700 employees; their expected date of completion at the time was June 30, 2017. The rollout date for the new EPA format was set for July 1, 2017.

We met with MCSO staff during our April 2017 site visit, and they informed us that training for the new EPA format started on schedule in March 2017. The EPA training, which had initially been scheduled jointly with EIS training, is now proceeding separately, since EIS training has been delayed. MCSO's projected date for completion of the training and implementation of the new EPA system continues to be July 2017.

During this reporting period, MCSO did not publish the revised GC-4 policy; and the Employee Performance Appraisals that were completed under the existing format, particularly those pertaining to supervisors, did not document the evaluation of rating dimensions that are required by this Order.

***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:** Not in compliance

- GC-4 (Employee Performance Appraisals), currently under revision.

**Phase 2:** Not in compliance

During our October 2016 site visit, we received an update on the progress of the new Employee Performance Appraisal process. The EPA form had been approved, and GC-4 had been revised to comply with the requirements of the Second Order. Subsequent to our site visit, MCSO provided us with a timeline for completion of the EPA process. MCSO advised us that its plan was to pair the EPA course of instruction with EIS training – and to offer Train-the-Trainer sessions on March 6, 2017. MCSO scheduled the formal instruction process to begin on March 20, 2017. MCSO command staff anticipated that they would provide instruction to over 700 employees; the expected date of completion at the time was June 30, 2017. MCSO anticipated that the rollout date for the new EPA format would be July 1, 2017.

During our April 2017 site visit, we met with MCSO staff, who informed us that training for the new EPA format started on schedule in March 2017. The EPA training, which had been scheduled jointly with EIS training, is proceeding separately as a result of the delay with EIS training. The projected date for completion of the training and implementation of the new EPA system continues to be July 2017.

During this reporting period, the Employee Performance Appraisals that were completed under the existing format, particularly those pertaining to supervisors, did not meet the requirements of the First Order.

***Paragraph 100.** The quality of Supervisory reviews shall be taken into account in the Supervisor's own performance evaluations.*

**Phase 1:** Not in compliance

- GC-4 (Employee Performance Appraisals), currently under revision.

**Phase 2:** Not in compliance

We reviewed Employee Performance Appraisals for 41 supervisors and commanders who received EPAs during this reporting period. All 41 of the appraisals contained comments related to the quality and effectiveness of supervision. Six of the 41 appraisals contained comments regarding the supervisors' demonstrated ability to identify and effectively respond to misconduct. Eleven of the 41 appraisals rated the supervisors on the quality of their reviews. Three of the supervisors whose Employee Performance Appraisals we reviewed had no direct reports. The quality of supervisory reviews, a mandated area of assessment in this Order, was added to the revised performance appraisal process. The new EPA form will have a mandatory rating dimension that specifically addresses this requirement.

The revised GC-4 (Employee Performance Appraisals) addresses the required dimensions, but the revised policy was not published during this reporting period. EPA training started in March 2017, and the new EPA format is scheduled for implementation by July 2017. The Employee Performance Appraisals reviewed for this reporting period did not address 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.*

**Phase 1:** In compliance

- Memorandum from Executive Chief Trombi, dated January 6, 2015.
- Memorandum from Sheriff Arpaio, dated February 12, 2015.
- Special Investigations Division Operations Manual, published May 15, 2015.

MCSO removed the enforcement of human smuggling laws from the mission statement of the Anti-Trafficking Unit, and no other specialized units include this mission as part of their duties. Based on these policy modifications, MCSO is in Phase 1 compliance with this Paragraph.

During our April site visit, MCSO advised us that the Anti-Trafficking Unit had been renamed the Fugitive Apprehension Investigative Team (FAIT). We reviewed a copy of the updated Special Investigations Division's Operations Manual, and the mission and objectives of FAIT are in compliance with this Paragraph.

**Phase 2:** In 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 each month of this reporting period, we received a list of all incidents involving MCSO jail bookings, and a list of criminal citations. For each month, we requested a random sampling of arrests and criminal citations. We reviewed 73 incidents involving arrest and 78 incidents resulting in criminal citations for this reporting period. We found no evidence of enforcement of immigration-related laws. We will continue to review Arrest Reports and criminal citations for compliance.

## 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.*

#### **Phase 1:** Not in compliance

- CP-2 (Code of Conduct), most recently amended on January 6, 2017.
- CP-3 (Workplace Professionalism), most recently amended on December 15, 2016.
- CP-5 (Truthfulness), most recently amended on December 21, 2016.
- CP-11 (Anti-Retaliation), most recently amended on December 1, 2016.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

Before the Second Order was issued on July 20, 2016, MCSO was in compliance with Phase 1 of this Paragraph. Changes are now required to numerous policies to comply with the Second Order. MCSO has made proposed revisions to these policies, and many are still in some phase of the draft review process.

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

During our reviews to assess Phase 2 compliance with this Paragraph, we have reviewed hundreds of misconduct investigations involving MCSO personnel. Many of them have been internally generated investigations, indicating that MCSO supervisory personnel are identifying potential misconduct. However, many of the actual investigations of this misconduct still fall short of compliance.

During this reporting period, we reviewed 51 administrative misconduct investigations that were initiated internally. Twenty-one were submitted in compliance with Paragraph 32. Two of these 21 were not properly investigated, and one did not have proper findings.

Of the additional 30 internally initiated investigations that we reviewed, three involved sworn (non-Patrol) personnel, 18 involved Detention personnel, and nine involved civilian personnel. Of these 30 cases, there were five that we do not believe were properly investigated, two where proper findings were not reached, and three where we believe the discipline assessed was not appropriate. We also found a number of procedural errors in the written reports.

While MCSO continues to identify and address misconduct, there remain concerns with the quality of many investigations that are conducted. We will continue to meet with those personnel responsible for the completion of misconduct investigations during our site visits to make them aware of our concerns regarding internal investigations and provide them with specific case examples.

### ***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:** Not in compliance

- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.
- Audits and Inspections Unit Operations Manual, currently under revision.

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

Although we had originally envisioned that PSB would be primarily responsible for the requirements of Paragraph 103, in 2016, MCSO raised the prospect of shifting integrity testing responsibilities from PSB to BIO. As we have previously noted, the Order does not require that any particular organizational component fulfill all of the requirements in Paragraph 103. Following our January 2017 site visit, we agreed with BIO that it could assume responsibility for the “regular, targeted, and random integrity audit checks” required by this Paragraph.

Prior to our April 2017 site visit, MCSO provided us and the Parties with a draft Audits and Inspections Unit (AIU) Operations Manual outlining how BIO’s new AIU would fulfill the “targeted” Paragraph 103 requirements. We reviewed this draft in detail with MCSO and the Parties during our site visit, and we look forward to its finalization, so that the AIU can begin conducting targeted integrity tests.

While the review process of the Audits and Inspections Unit Operations Manual is still underway, for this reporting period, BIO submitted several completed inspections in support of the “regular” and “random” elements of this Paragraph. The inspections examined, for example, Supervisory Notes, County Attorney turndown dispositions, and employee email usage; we reviewed these reports and believe that they comport with the Paragraph 103 requirement for “regular” and “random” integrity audit checks.

**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.*

**Phase 1:** In compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

In the fall of 2015, MCSO developed a draft checklist and investigative format for administrative investigations. All the requirements in this Paragraph are 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 are required to use these forms. MCSO is consistently meeting this requirement, and MCSO has included the checklists in administrative investigations forwarded for our review.

During this reporting period, we reviewed 123 administrative misconduct investigations. Seventy-two involved sworn MCSO personnel. All were completed on or after June 20, 2016. All of the investigations included the use of the required investigative format and checklist. We consistently noted that deputies were appearing for scheduled interviews, providing all required information to investigators, and cooperating with the investigation. There were no instances noted where a supervisor failed to facilitate a deputy's attendance at a required interview.

**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.*

**Phase 1:** In compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

Our reviews of investigations conducted by MCSO 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 now makes all preliminary disciplinary decisions. The PSB and Compliance Bureau Commanders created a worksheet that provides information on 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 our reviews for this reporting period, we found that in all sustained cases, the PSB Commander determined the findings and preliminary discipline range for the violations. We found these preliminary decisions to be consistent with the Discipline Matrices currently in use. We also consistently found that where appropriate, discipline history, past complaints, performance evaluations, traffic stop and patrol data, and training records were included in the documents considered for final discipline findings.

Of the 19 sustained cases involving sworn personnel, we noted only one case where we do not believe the employee's work history was properly considered. In this case, the final discipline was mitigated to a lesser sanction by the appointing authority, despite the previous documented misconduct of the employee. In the remaining 18 cases involving sworn personnel, the required information was properly documented and considered prior to the imposition of discipline.

***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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

MCSO has two obligations under this Paragraph: to maintain and make records available. The Paragraph also covers the requirement that MCSO make un-redacted records of such investigations available to the Plaintiffs' attorneys and Plaintiff-Intervenors as well.

MCSO has been responsive to our requests, and neither the Plaintiffs nor Plaintiff-Intervenors 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-Intervenors have access to this information, including documents applicable to this Paragraph, at the same time as we do.

## Section 11: Community Engagement

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### COURT ORDER XII. COMMUNITY ENGAGEMENT

#### *a. Community Outreach Program*

**(Note: Unchanged language is presented in italicized font. Additions are indicated by underlined font. Deletions are indicated by crossed-out font. Where an entire Paragraph has been removed, that is indicated with brackets, but the numbering remains unchanged. For example: “108. [REMOVED]”.)**

*Paragraph 107. To rebuild public confidence and trust ~~in the MCSO and~~ in the reform process, the MCSO Monitor shall ~~work to improve community relationships and engage constructively with the community during the period that this Order is in place. To this end, the MCSO shall create the following district community outreach program.~~*

On April 4, 2014, an amended Order (Document 670) made community outreach a Monitor’s function. This is no longer an MCSO responsibility. MCSO opted to remove itself from having responsibility over the community engagement program as initially set out in the Order. We and the Plaintiffs’ representatives communicate regularly about innovative ways to engage community members and leaders; supporting and encouraging Community Advisory Board (CAB) members; advertising upcoming community events; facilitating community members’ access to the MCSO complaint process; and informing the public about the authority of MCSO regarding immigration enforcement.

While MCSO is no longer obligated, pursuant to the Order, to engage in community outreach activities, we trust that the command staff understand the benefit in reaching out to the various communities in the agency’s service jurisdiction.

*Paragraph 108. [REMOVED] Within 180 days of the Effective Date, MCSO shall develop and implement a Community Outreach and Public Information program in each MCSO District.*

*Paragraph 109. ~~As part of its Community Outreach and Public Information program, the MCSO~~ The Monitor shall hold a public meeting in each of MCSO’s patrol Districts within 90 180 days of the Effective Date issuance of this amendment to the Order, and at least between one and three meetings in each of MCSO’s patrol Districts annually thereafter. The meetings shall be under the direction of the Monitor and/or his designee. 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 provided. The MCSO Monitor shall clarify for the public at these meetings that ~~the MCSO does not~~ lacks the authority to enforce immigration laws except to the extent that it is enforcing Arizona and federal criminal laws.*

On April 4, 2014 an amended Order (Document 670) gave us the requirement to hold public meetings. During this reporting period, we held one community meeting, on January 25, 2017, in MCSO Patrol District 2, at Frank Elementary School, located at 8409 Avenida Del Yaqui in Guadalupe. The meeting was held from 6:30 p.m. until 9:00 p.m. Approximately 72 community members attended this meeting, including several local Guadalupe officials.

Monitoring Team representatives welcomed the attendees and advised them that, before the close of the meeting, there would be an opportunity for them to ask questions and offer comments. We welcomed Sheriff Penzone and members of his staff; and introduced representatives of the ACLU of Arizona, the Community Advisory Board (CAB), and the U.S. Department of Justice (DOJ), who were in attendance.

A representative of the ACLU of Arizona presented an overview and history of the *Melendres* litigation, and explained the ongoing Court contempt proceedings. She described the ACLU's role in the reform process and the role of the CAB. The ACLU representative provided an overview of the Second Order, and noted the important role the community meetings play in providing a forum for community members to ask questions and provide input regarding what is occurring in the community and about the monitoring process. She stated that the October 2013 Court Order directed remedies, the appointment of the Monitor and Monitoring Team, and a review and/or update or creation of policies and procedures and their implementation by MCSO. She pointed out that, as Plaintiffs' attorneys, the ACLU of Arizona is closely involved in, and provides input on, the reform process.

A DOJ representative followed, explaining DOJ's role as a Plaintiff-Intervenor in the *Melendres* case. She discussed DOJ's role in the reform process and explained that, as a Plaintiff-Intervenor, DOJ works closely with the Plaintiffs' attorneys. She noted DOJ's nationwide involvement in police reform and how this case is different because it is not a Consent Judgment.

Next, a member of the CAB addressed the attendees, pointing out how the community members have been impacted and how the CAB can be an advocate and a voice for community members.

An MCSO representative followed and introduced members of the MCSO staff and Community Outreach Program in attendance. He said that MCSO and the Monitoring Team are working together collaboratively to implement the reforms directed by the Court. He thanked members of the ACLU of Arizona, DOJ, and the CAB for attending and informed the community members in attendance that the MCSO representatives would be available during and following the meeting to listen to and address the input from the attendees.

A Monitoring Team representative followed and provided an update of recent Court activity in the *Melendres* case, including a summary of the additional requirements contained in the Second Order, which was issued in July 2016. The representative pointed out that the additional requirements cover areas including misconduct investigations and supervision, that the Monitor now oversees and conducts investigations of all complaints against MCSO employees, and that the Monitor can now impose discipline if the misconduct involves members of the Plaintiffs' class.

The Monitoring Team representative also shared that, per the Second Order, the MCSO complaint process will be more open and accessible to the public. MCSO is required to publish reports that summarize the results of its misconduct investigations. Deputies are required to carry complaint forms in their vehicles and, upon request, will provide community members with their contact information and information on how to file a complaint. Members of the public can walk into any MCSO office, and receive information or assistance from MCSO employees in filing their complaint. Complaint forms will also be available at locations around the County; and MCSO has established a free, 24-hour hotline for members of the public to make complaints.

Monitoring Team representatives explained to the meeting attendees that the requirements of both the First and Second Orders encompass sound police practices and policies that are common in other law enforcement agencies around the country. We explained that we evaluate MCSO's compliance with the Orders' requirements by reviewing reports, examining data, and visiting deputies in the field. We stated that, while MCSO has been slow in implementing its Supervisory Training, it finally began in June, following completion of instructor training.

We also made it clear that MCSO did not have the authority to enforce immigration laws, except to the extent that it is enforcing Arizona and federal laws. We also pointed out that the Order prohibits the use of saturation patrols and that, in the 32 months that we have been working with MCSO, MCSO has not employed saturation patrols.

Before opening the meeting for comments and questions, we concluded our presentation by emphasizing the importance of hearing from the community members. Questions and comments from the attendees included concerns that MCSO was not in compliance with the Court requirements, hope for the future with new leadership at MCSO, and concerns that MCSO offices are not open at night or on the weekends. We responded to all inquiries, as did Plaintiffs' and Plaintiff-Intervenors' representatives, or members of MCSO, as appropriate.

***Paragraph 110.*** *The meetings present an opportunity for ~~MCSO representatives~~ the Monitor to listen to community members' experiences and concerns about MCSO practices implementing this Order, including the impact on public trust. ~~MCSO representatives shall make reasonable efforts to address such concerns during the meetings and afterward.~~ The Monitor may investigate and respond to those concerns. 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 Defendants' compliance with this order, it may assist the complainant in filing an appropriate complaint with the MCSO.*

Approximately 72 community members attended the meeting in Guadalupe. The meeting allowed ample opportunity for attendees to ask questions or offer comments. Community members asked questions and offered comments, which included concerns that MCSO was not in compliance with the Court requirements, hope for the future with new leadership at MCSO, and concerns that MCSO offices are not open at night or on the weekends. A key objective of the meeting was to let those in attendance know that the Monitor has the authority, granted by the Court, to receive complaints about any activity involving MCSO personnel and ensure that an investigation is adequately conducted. We made complaint forms available for this purpose.

After the meeting, all Monitoring Team personnel remained behind to individually answer questions, and did so until the last attendee left the building.

**Paragraph 111.** *English- and Spanish-speaking MCSO 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. At least one MCSO Supervisor with extensive knowledge of the agency's implementation of the Order, as well as the Community Liaison Officer (described below) shall participate in the meetings. The Monitor may request Plaintiffs' and/or Defendants' representatives shall be invited to attend such meetings and assist in answering inquiries by the community. The Defendants are under no obligation to attend such meetings, but to the extent they do not attend such meetings after being requested by the Monitor to do so, the Monitor may report their absence to the public and shall report their absence to the Court.*

Selected members of the Monitoring Team, some of whom are bilingual, attended the meeting in Guadalupe. We hired a professional Spanish interpreter to ensure that Spanish-speaking attendees could understand all remarks, questions, and responses. In addition, representatives of the ACLU of Arizona, DOJ, the CAB, and MCSO offered remarks at the meeting. MCSO was well represented, and we recognized MCSO for its attendance. Several of the MCSO personnel who attended the meeting play instrumental roles in the implementation of the Orders.

**Paragraph 112.** *The meetings shall be held in locations convenient and accessible to the public. At least ~~one week~~ ten days before such meetings, the MCSO Monitor shall widely publicize the meetings using English and Spanish-language television, print media and the internet. The 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 other expenses that the Monitor will incur as a result of performing his obligations with respect to the Community Outreach Program. If the Monitor determines there is little interest or participation in such meetings among community members, or that they have otherwise fulfilled their purpose, he can file a request with the Court that this requirement be revised or eliminated.*

Our preparations for the meeting in Guadalupe began well in advance of the meeting date. Issues such as site selection, advertisement in local radio and print media in English and Spanish, agenda creation, and meeting logistics are of utmost importance in the planning stages. We emailed community leaders and media representatives soliciting their assistance in informing community members of the meeting and encouraging their attendance at the meeting. Before finalizing these items, we consider input from the CAB and the ACLU of Arizona. We also keep CID staff abreast of the planning; and we consult with them on potential meeting security issues and other logistics. Members of the Monitoring Team had numerous discussions with the ACLU of Arizona and the CAB members regarding preparations for the public meeting.

Our selection of the venue for the meeting was based on accessibility, adequate meeting space, adequate parking, and ease in locating the meeting site. We widely publicized the meeting in Guadalupe. Advertisements, in both English and Spanish, appeared in print media with the widest circulation in the Guadalupe area in which the meeting was held. These ads were also included in the media outlets' Facebook pages and websites. We also ran extensive radio spots in Spanish and English, and distributed flyers in the vicinity of the meeting venue. The ACLU of Arizona also submitted the notice of the meeting to numerous online calendars and its local media contacts.

***b. ~~Community Liaison Officer Monitor~~***

***Paragraph 113.*** *[REMOVED] Within 90 days of the Effective Date, MCSO shall select or hire a Community Liaison Officer (“CLO”) who is a sworn Deputy fluent in English and Spanish. The hours and contact information of the CLO shall be made available to the public including on the MCSO website. The CLO shall be directly available to the public for communications and questions regarding the MCSO.]*

***Paragraph 114.*** *In addition to the duties set forth in Title XIII of this order, ~~The CLO~~ the Monitor 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 111; and*
- c. to compile any Complaints, concerns and suggestions submitted to ~~CLO~~ him 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;*
- [d. [REMOVED] to communicate concerns received from the community at regular meetings with the Monitor and MCSO leadership; and]*

[e. *[REMOVED] to compile concerns received from the community in a written report every 180 days and share the report with the Monitor and the Parties.*]

At the community meeting in Guadalupe, we and the Plaintiffs' representatives explained the breadth of the Order to the community members in attendance. Sheriff Penzone thanked the community members for attending the meeting, and stated that MCSO wished to hear the community members' comments and complaints. Members of PSB attended the meeting to receive any complaints from attendees.

To facilitate a dialogue, we invited community members to ask any questions of these representatives directly, and gave them an opportunity to comment on the information provided by these representatives. We provided community members with forms to document any concerns or complaints about MCSO. After the meeting, members of the Monitoring Team remained and spoke to several attendees who voiced their compliments, concerns, and opinions regarding MCSO's operations.

### ***c. Community Advisory Board***

***Paragraph 115.*** ~~*MCSO*~~ *The Monitor and Plaintiffs' representatives shall work with community representatives to create a Community Advisory Board ("CAB") to facilitate regular dialogue between the MCSO Monitor and community leaders, and to provide specific recommendations to MCSO 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.*

We work closely with Plaintiffs' counsel to support and provide guidance to the CAB. We conduct planning discussions with CAB members and representatives of the ACLU of Arizona regarding scheduling small gatherings of Monitoring Team members, CAB members, ACLU of Arizona representatives, and Latino community leaders during our site visits.

***Paragraph 116.*** ~~*The CAB shall have six*~~ *three* ~~*members, three to be selected by the MCSO and*~~ ~~*three to be selected by 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. However, a member of the MCSO Implementation Unit and at least one representative for Plaintiffs shall attend every meeting of the CAB. The CAB shall continue for at least the length of this Order.*~~

With the resignation of one CAB member in October 2016, the CAB is currently comprised of two community members. Neither of these members are, or have been, MCSO employees, named as class representatives in this matter, or attorneys involved in the *Melendres* litigation.

The ACLU of Arizona is currently working to appoint a new CAB member. We will report on the progress of this effort in our next quarterly status report.

**Paragraph 117.** *The CAB shall hold ~~public~~ meetings at regular intervals of no more than four months. The meetings may be either public or private as the purpose of the meeting dictates, at the election of the Board. The Defendants shall either provide a suitable place for such meetings that is acceptable to the Monitor, or pay the Monitor the necessary expenses incurred in arranging for such a meeting place. The Defendants shall also pay to the Monitor the additional reasonable expenses that he will incur as a result of performing his obligations with respect to the CAB including providing the CAB with reasonably necessary administrative support. ~~The meeting space shall be provided by the MCSO.~~ The ~~CEO~~ Monitor shall coordinate the meetings and communicate with Board members, and provide administrative support for the CAB.*

Members of the Monitoring Team frequently communicate with CAB members to assist in scheduling CAB meetings, identifying appropriate meeting venues, and providing appropriate logistical support. During this reporting period, CAB members did not conduct public or private meetings with other community representatives to discuss the quality of law enforcement support provided by MCSO, and the relationship between community members 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 make reasonable efforts to address such concerns.~~ and transmit them to the Monitor for his investigation and/or action. Members ~~will~~ may also hear from MCSO Personnel on matters of concern pertaining to the MCSO's compliance with the orders of this Court.*

We continue to emphasize with CAB members the importance of transmitting to us any complaints they have received that may require investigation. In addition, we have discussed the crucial role of CAB to access the community in a way that the Monitoring Team cannot. We have advised the CAB members to compile community members' concerns regarding MCSO's actions or compliance with the Order. To facilitate this effort, the ACLU of Arizona operates a bilingual website, [ChangingMCSO.org/CambiandoMCSO.org](http://ChangingMCSO.org/CambiandoMCSO.org). The website allows the public to gather information about the monitoring process, including the times and locations for community meetings, Monitoring Team reports, MCSO reports, and significant Court filings. The website also includes a form for filling out complaints, which are directly conveyed to the CAB and Monitoring Team.

## 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:** Deferred

MCSO provided us with the following:

- GD-9 (Litigation Initiation, Document Preservation, and Document Production Notices), currently under revision.
- GA-1 (Development of Written Orders), most recently amended on November 3, 2016.
- GC-7 (Transfer of Personnel), under revision at the close of the reporting period.
- GE-4 (Use, Assignment, and Operation of Vehicles), most recently amended on December 7, 2016.
- GI-5 (Voiance Language Services), most recently amended on December 21, 2016.
- GC-4 (Employee Performance Appraisals), currently under revision.
- GC-11 (Employee Probationary Periods), most recently amended on December 7, 2016.
- CP-2 (Code of Conduct), most recently amended on January 6, 2017.

- EA-2 (Patrol Vehicles), most recently amended on December 8, 2016.
- GC-12 (Hiring and Promotion Procedures), most recently amended on February 1, 2017.
- GH-5 (Early Identification System), most recently amended on March 24, 2017.
- GJ-26 (Sheriff's Reserve Deputy Program), currently under revision.
- GJ-27 (Sheriff's Posse Program), currently under revision.
- CP-3 (Workplace Professionalism), most recently amended on December 15, 2016.
- CP-5 (Truthfulness), most recently amended on December 21, 2016.
- CP-11 (Anti-Retaliation), most recently amended on December 1, 2016.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Body-Worn Camera Operations Manual, most recently amended on December 22, 2016.
- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.
- GG-1 (Peace Officer Training Administration), under revision at the close of the reporting period.
- GG-2 (Detention/Civilian Training Administration), under revision at the close of the reporting period.
- GB-2 (Command Responsibility), most recently amended on February 1, 2017.
- GJ-24 (Community Relations and Youth Programs), most recently amended on January 7, 2017.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.
- Audits and Inspections Unit Operations Manual, currently under revision.
- Training Division Operations Manual, currently under revision.

We received a majority of the above documents within one month of the entry of the Order. The Monitoring Team and the Parties conducted an initial review and returned the revised documents, with additional recommendations, to MCSO for additional work. By the end of this reporting period, we approved a total of 16 internal policies and manuals, and MCSO formally published them. MCSO continues to revise the remaining 13 internal policies and manuals related to misconduct investigations, employee discipline, and grievances. Those remaining policies and manuals identified by MCSO were in some phase of review by us and the Parties at the end of this reporting period. Most of the original 29 policy and manual drafts have undergone multiple rounds of review. In addition to ongoing document exchange of revisions and recommendations, we initiated meetings with MCSO, the Plaintiffs and Plaintiff-

Intervenors during our April 2017 site visit for the specific purpose of discussing content and the progress of policy and manual revisions. We met with representatives of MCSO who are integral to the development of the policies and manuals directly associated with the Second Order. We continue to closely engage MCSO to ensure that the final policies and manuals will incorporate all of the requirements of the Second Order.

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 Second Order's issuance. The sheer volume of policies, as well as the extensive modifications they contain, rendered that target date unachievable. This is due, in large measure, to researched and well-considered recommendations by the Parties, and robust discussion about policy language, application, and outcomes during our site visit meetings. While we acknowledge the work resulting in the publication of the 16 policies and manuals that were completed by the end of this reporting period, and appreciate that many of the policies have required several iterations, we note that there are a combined 13 policies and manuals still being revised pursuant to our and the Parties' comments.

***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.*

**Phase 1:** Not in compliance

- CP-2 (Code of Conduct), most recently amended on January 6, 2017.
- CP-3 (Workplace Professionalism), most recently amended on December 15, 2016.
- CP-5 (Truthfulness), most recently amended on December 21, 2016.
- CP-11 (Anti-Retaliation), most recently amended on December 1, 2016.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To determine Phase 2 compliance with this Paragraph, we review administrative and criminal misconduct investigations.

During this reporting period, we reviewed 123 completed administrative misconduct investigations and seven completed criminal misconduct investigations. Four completed CRM cases were considered separately and will be reported in Paragraphs 275-288 of this report as they have numerous additional compliance requirements. Of the 123 administrative investigations that we reviewed for compliance, 25 were initiated prior to the Second Order, and 98 were initiated after the Second Order. Three of the seven criminal investigations were initiated before the Second Order, and four were initiated after the Second Order. All 130 investigations were completed after the issuance of the Second Order.

For this reporting period, we assessed all 130 investigations, as all were completed after July 20, 2016. We made allowances for those 28 cases that were initiated prior to the Second Order by noting in our case reviews that certain compliance requirements were not applicable at the time the investigative action occurred. It is likely that by the next reporting period, few – if any – cases will have been initiated prior to the Second Order; and our compliance findings will be fully reflective of all internal investigations that were both initiated and completed by MCSO after the issuance of the Second Order.

For this reporting period, we reviewed 123 closed administrative investigations. Seventy-one cases involve sworn personnel. One case involves a Posse member. Forty cases involve Detention personnel, and 11 involve civilian employees. Sworn or Detention personnel assigned to PSB conducted 74 of the investigations. Sworn supervisors in Districts or other divisions investigated the remaining 49 cases. Seventy-two of the investigations were generated because of external complaints, and 51 were generated based on internal complaints. Six of the 123 administrative cases were generated because of a third-party complaint.

In addition to the review of administrative misconduct investigations, we reviewed seven criminal misconduct investigations. All were conducted by PSB and completed after July 20, 2016.

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, a Patrol supervisor recognized a potential conflict of interest in one case. The supervisor notified PSB, and the case was reassigned to another supervisor. No other potential conflict was disclosed, and our case reviews did not discover any potential conflicts that should have been reported.

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. Our review of the 123 completed administrative investigations for this reporting period did not reveal any instances where a conflict of interest by an MCSO member responsible for discipline was identified. There are still a number of pending investigations that were previously outsourced by PSB based on the Court's May 2016 Findings of Fact. These cases are still under investigation by another law enforcement agency and a private vendor.

Paragraph 167.c. requires that investigations into truthfulness be initiated by the Chief Deputy or the PSB Commander. There were eight completed misconduct investigations during this reporting period where the Chief Deputy or the PSB Commander authorized a truthfulness allegation. We did not note any additional cases where we believe MCSO should have conducted a truthfulness investigation.

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. 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 123 completed administrative cases we reviewed for this reporting period, there were 49 investigations where an employee reported potential misconduct. There were no indications that any employee failed to report potential misconduct by another employee 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. Of the 49 cases where employees brought forward potential misconduct, there was one such report where a supervisor was notified, but failed to immediately report the alleged misconduct to PSB. This resulted in an unnecessary delay of the investigation. In the remaining 48 cases, PSB was immediately notified and the proper documentation was completed as required.

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 indications in any of the investigations that we reviewed that any employee had failed to bring forward misconduct as required and no misconduct investigations alleging this conduct were initiated.

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 were completed after July 20, 2016 and reviewed during this reporting period complied with this requirement.

***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.*

**Phase 1:** Not in compliance

- CP-2 (Code of Conduct), most recently amended on January 6, 2017.
- CP-3 (Workplace Professionalism), most recently amended on December 15, 2016.
- CP-5 (Truthfulness), most recently amended on December 21, 2016.
- CP-11 (Anti-Retaliation), most recently amended on December 1, 2016.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.

- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations that were completed during this reporting period.

During this reporting period, there were no investigations initiated where there were allegations of reprisal, discouragement, intimidation, coercion, or adverse actions against any person because that person reported misconduct, attempted to report misconduct, or cooperated in any misconduct investigation.

***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.*

**Phase 1:** Not in compliance

- CP-2 (Code of Conduct), most recently amended on January 6, 2017.
- CP-3 (Workplace Professionalism), most recently amended on December 15, 2016.
- CP-5 (Truthfulness), most recently amended on December 21, 2016.
- CP-11 (Anti-Retaliation), most recently amended on December 1, 2016.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations that were completed during this reporting period.

During our January 2017 site visit, we made a site visit documentation request for compliance information that corresponds to this Paragraph and Paragraph 168. We have also submitted an ongoing monthly document request for the same material to ensure that any such allegations come to our attention.

During this reporting period, there were no allegations made regarding acts of retaliation related to the requirements of this Paragraph.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 130 completed misconduct investigations conducted by MCSO personnel. Seven of these were criminal misconduct investigations, and 123 were administrative misconduct investigations. Seventy-seven investigations were initiated as a result of an external complaint. Fifty-three investigations were generated due to employee reports of misconduct, or discovery of potential misconduct by MCSO supervisory personnel.

We reviewed completed investigations generated by allegations from six third-party complainants and eight anonymous complainants. All were completed as required for compliance. We have not become aware of any evidence that indicates that MCSO has refused to accept and complete investigations in compliance with the requirements of this Paragraph. None of the 130 misconduct investigations that we reviewed during this reporting period had any allegations indicating that any third-party or anonymous complaint had not been appropriately accepted and investigated.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

We determined that 19 of the 123 completed administrative investigations involved complainants who sought to withdraw their complaints; or were unavailable, unwilling, or unable to cooperate. MCSO completed all 19 investigations and reached a finding as required. We also determined that five of the 123 completed investigations involved circumstances where the principal had resigned or retired. MCSO completed all five of these investigations and reached a finding. Of the 123 investigations we evaluated for compliance, none were prematurely terminated.

***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.*

**Phase 1:** Not in compliance

- CP-5 (Truthfulness), most recently amended on December 21, 2016.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph during this reporting period, we reviewed 123 completed administrative misconduct investigations conducted by MCSO personnel.

There was one investigation identified by PSB where the principal failed to provide all information or evidence required during the investigation. This employee was ultimately dismissed from employment with MCSO based on this investigation. We did not identify any cases during our reviews where we believe that an employee intentionally failed to provide all required information or evidence during an investigation and MCSO failed to act.

***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:** Not in compliance

- GC-4 (Employee Performance Appraisals), currently under revision.
- GC-11 (Employee Probationary Periods), most recently amended on December 7, 2016.
- GC-12 (Hiring and Promotion Procedures), most recently amended on February 1, 2017.

**Phase 2:** In compliance

During our April 2017 site visit, we met with PSB representatives regarding policy updates and status. PSB command personnel once again affirmed that the current process to ensure compliance with this Paragraph is that when the promotion list is established for Detention or sworn personnel, PSB receives the promotion list of candidates. Prior to any finalized promotion, PSB conducts a disciplinary check in the automated system (IAPro). The results of the check are provided to attendees at the promotion meeting as part of the promotional consideration process. Additionally, the PSB Commander attends the promotion meetings for both Detention and sworn promotion candidates. Regarding the hiring of personnel from a civilian employment position to a sworn employment position, a thorough background investigation is completed. The background process involves an updated review of the candidate's PSB files, which is completed by Pre-Employment Services. The candidate's background from his/her original hire into a Detention position is refreshed when s/he is considered for the sworn position. We have a standing monthly document request to MCSO to ensure that MCSO informs us of any circumstance associated with this Paragraph. As a result of that standing monthly document request, we have not learned – or been in receipt – of any written justification whereby a principal or an applicant in an ongoing serious misconduct investigation has been promoted or hired during this reporting period.

***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.*

**Phase 1:** In compliance

- GC-12 (Hiring and Promotional Procedures), most recently amended on February 1, 2017.

**Phase 2:** In compliance

As of August 1, 2016, MCSO began submitting advance notice of transfers of personnel to and from the Professional Standards Bureau, the Bureau of Internal Oversight, and the Court Implementation Division. During this reporting period, MCSO submitted the resumes and disciplinary history of six employees for approval. We reviewed the documentation submitted for each employee to ensure that each met the requirements of this Paragraph. We approved all of the submitted transfers based on the information provided. During our April 2017 site visit, we audited the file of one of the employees transferred and verified the accuracy of the information submitted for each employee. We also reviewed the file of another employee whose transfer had not been submitted at the time of our site visit, but whose transfer request was subsequently requested and approved.

**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 March 24, 2017.

**Phase 2:** Not in compliance

For January, MCSO submitted 199 Supervisory Notes that documented EIS review of personnel transferred to new assignments. For February, MCSO submitted 130 Supervisory Notes that documented EIS review of personnel transferred to new assignments. For March, MCSO submitted 93 Supervisory Notes that documented EIS review of personnel transferred to new assignments. Of these, we selected a random 10% sample for inspection and found that the Supervisory Notes submitted documented supervisory review of deputies upon transfer. We also found that commanders were reviewing supervisors' EIS profiles upon transfer. However, this Paragraph requires that commanders review the disciplinary history of all employees who are transferred to their command. The Supervisory Notes submitted lacked documentation that commanders were reviewing EIS profiles for all personnel transferred under their command.

**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:** Not in compliance

- GC-4 (Employee Performance Appraisals), currently under revision.

**Phase 2:** Not in compliance

We reviewed Employee Performance Appraisals for 41 supervisors and commanders who received EPAs during this reporting period. The requirements of this Paragraph were not consistently addressed in the Employee Performance Appraisals reviewed for this reporting period.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations that were completed during this reporting period.

In misconduct investigations that resulted in serious discipline and in which the employee was, by law, afforded the opportunity for an administrative hearing, the only reference to the hearing was “pre-determination hearing.”

**B. Misconduct-Related Training**

**Paragraph 178.** *Within three months of the finalization of these policies consistent with ¶ 165 of this Order, the Sheriff will have provided all Supervisors and all personnel assigned to the Professional Standards Bureau with 40 hours of comprehensive training on conducting employee misconduct investigations. This training shall be delivered by a person with subject matter expertise in misconduct investigation who shall be approved by the Monitor. This training will include instruction in:*

- a. *investigative skills, including proper interrogation and interview techniques, gathering and objectively analyzing evidence, and data and case management;*
- b. *the particular challenges of administrative law enforcement misconduct investigations, including identifying alleged misconduct that is not clearly stated in the complaint, or that becomes apparent during the investigation;*
- c. *properly weighing the credibility of civilian witnesses against employees;*
- d. *using objective evidence to resolve inconsistent statements;*
- e. *the proper application of the appropriate standard of proof;*
- f. *report-writing skills;*
- g. *requirements related to the confidentiality of witnesses and/or complainants;*
- h. *considerations in handling anonymous complaints;*
- i. *relevant MCSO rules and policies, including protocols related to administrative investigations of alleged officer misconduct; and*
- j. *relevant state and federal law, including Garrity v. New Jersey, and the requirements of this Court’s orders.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedures), currently under revision.

**Phase 2:** Not in compliance

This lesson plan was not completed and approved during this reporting period. We are continuing to develop this training as technical assistance. The finalization of this lesson plan and delivery of the curriculum is predicated upon the publication of GH-2 (Internal Investigations) and GC-17, (Employee Disciplinary Procedures). MCSO did not publish either of these policies during this reporting period. MCSO did not provide Internal Investigation Training during this reporting period.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** Deferred

The initial Internal Investigation Training was not developed and delivered during this reporting period. The training required by Paragraph becomes applicable one year after the initial Internal Investigation Training is offered.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedures), currently under revision.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.

**Phase 2:** Not in compliance

During this reporting period, MCSO did not develop or deliver the training for all employees on MCSO's new or revised policies related to misconduct investigations, discipline, and grievances, as required by this Paragraph. The relevant policies were still under revision.

**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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedures), currently under revision.

**Phase 2:** Not in compliance

During this reporting period, MCSO did not provide training on how to properly handle civilian complaint intake, including how to provide complaint materials and information, and the consequences for failing to take complaints. The relevant policies were still under revision.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedures), currently under revision.

**Phase 2:** Not in compliance

During this reporting period, MCSO did not develop or deliver training for all supervisors on their obligations when called to a scene by a subordinate to accept a civilian complaint about that subordinate's conduct and on their obligations when they are phoned or emailed directly by a civilian filing a complaint against one of their subordinates.

**C. Administrative Investigation Review**

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** Not in compliance

To determine Phase 2 compliance with this Paragraph for this reporting period, we reviewed 123 completed administrative misconduct investigations conducted by MCSO personnel.

Of these, there were 15 cases (18%) where the investigative findings reached were not based on an appropriate standard of proof. As was true in the last reporting period, where 17% of the findings were not properly supported, our review this reporting period indicated that there is

still not one primary reason for these inappropriate findings. We noted cases where all allegations were not properly addressed, cases that were not adequately investigated, and cases where potential witnesses and investigative leads were not interviewed. In several of the cases, the facts of the investigation supported a finding different from what was determined; and in other cases, findings were based on information or evidence not provided to us for review. One case included video evidence that contradicted the finding. We noted that eight of these investigations involved Detention personnel, and Detention personnel assigned to PSB conducted the investigations. The remaining seven involved sworn personnel and were investigated by sworn supervisory personnel at the District or Division level.

During our next site visit, we will specifically address these investigations and discuss with MCSO personnel our ongoing concerns relative to compliance with this Paragraph.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To determine Phase 2 compliance with this Paragraph, we reviewed a total of 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

In all but two of the 123 cases reviewed, PSB was properly and immediately notified of the complaint. One of the two cases where PSB was not properly notified involved the failure to immediately enter the case into Blue Team upon notification of the complaint. Notification on the second case was delayed due to an incorrect entry into Blue Team. This was an external complaint and was not discovered until the complainant called requesting follow-up information.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

During our October 2016 and January 2017 site visits, we met with the PSB lieutenant who serves as the primary administrator for the IPro database system. The demonstration that was provided represented IPro as a technology instrument that meets the compliance criteria of this Paragraph, to include logging of critical dates and times, alerts regarding timelines and deadlines, chronological misconduct investigation status, notifications, and dispositions. The lieutenant conducts a weekly evaluation of closed cases to ensure that data is entered into the system. A monthly review is conducted to audit timelines associated with open investigations. The tracking system provides estimates of key timelines for all investigators to ensure that they learn of previous and upcoming investigative milestones.

PSB confirmed that civil notice claims are now entered into the tracking system. The IPro system integrates exceptionally well with the EIS and Blue Team technology systems. The system can be accessed remotely. Additionally, PSB has hired a management analyst dedicated to the administration of the centralized tracking system. The documentation that is provided to us for review, and the direct user access that one Team member 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 123 of the administrative misconduct investigations were properly assigned a unique identifier. All but 25 of the cases were both initiated and completed after July 20, 2016. Seventy-two of the cases involved an external complainant requiring that PSB provide the complainant with this unique identifier. There were 24 cases where this identifier was not provided to an external complainant. The majority of these were resultant from anonymous complaints, complainants that refused to provide contact information, or were investigations initiated prior to July 20, 2016, when this requirement was not in place. In three of the cases initiated after July 20, 2016, MCSO either failed to provide the required unique identifier to the complainant when MCSO had adequate contact information to do so, or failed to include this document in the case files MCSO produced for our review.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

To determine compliance with this Paragraph, we verified that PSB maintains both hardcopy and electronic files intended to contain all the documents required for compliance with this Paragraph.

During our January 2017 site visit, a Monitoring Team member inspected the file rooms where hardcopies of investigations are kept. Criminal and administrative investigation files are kept in separate rooms, and access to these rooms is restricted. Our random review of internal administrative and criminal case files verified that PSB maintains files as required. A Monitoring Team member also has access to IAPro and verified that case files are maintained in an electronic format.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations that were conducted and completed by MCSO personnel during this reporting period.

We have previously agreed 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 is determined once the investigation is completed.

All of the 123 administrative misconduct investigations that we reviewed for this reporting period complied with the requirements of this Paragraph.

***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.*

**Phase 1:** Not in compliance

- CP-2 (Code of Conduct), most recently amended on January 6, 2017.
- CP-3 (Workplace Professionalism), most recently amended on December 15, 2016.
- CP-5 (Truthfulness), most recently amended on December 21, 2016.
- CP-11 (Anti-Retaliation), most recently amended on December 1, 2016.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph during this reporting period, we reviewed 123 completed administrative misconduct investigations conducted by MCSO personnel.

Of the total 123 administrative misconduct investigations conducted during this reporting period, 49 were investigated by divisions or Districts other than PSB. Two of these 49 cases involved serious allegations of misconduct that should have been investigated by PSB. While we agree with the unfounded and not sustained outcome in these two cases, both initially had potential criminal allegations and should have been referred to PSB for investigation.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** Deferred

To determine Phase 2 compliance with this Paragraph, we reviewed a total of 123 misconduct investigations conducted by MCSO personnel and completed during this reporting period.

Of the 123 administrative misconduct cases we reviewed for compliance with this Paragraph, PSB investigators conducted 74 of the investigations. The remaining 49 cases were investigated at the District or Division level. As previously noted in Paragraph 189, two of these 49 investigations should have been investigated by PSB as they involved potential serious misconduct.

We have indicated previously that supervisors in the Districts do not yet meet the requirements of this Paragraph related to qualifications and training. The required training module has not yet been completed and delivered. Paragraph 178 does not require this training to occur until after finalization of those policies related to misconduct investigations.

Members of the Monitoring Team are working with MCSO staff to finalize the training curricula regarding misconduct investigations. This training will incorporate revisions and updates to MCSO policies related to the investigation of misconduct complaints. During our site visits in October 2016, January 2017, and April 2017, we met with District and Division command personnel to discuss internal investigations. During these meetings, we provided information on the requirements for conducting internal investigations, discussed deficiencies we found in those investigations completed at the District and Division level, and emphasized the need for quality control and accountability by those who investigate or review these investigations.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

To determine Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

During this reporting period, there were no cases where an investigating supervisor outside of PSB discovered serious or criminal misconduct during an investigation that should have resulted in the case being transferred to PSB.

**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.*

**Phase 1:** Not in compliance

- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not in compliance

During our April 2017 site visit, PSB command personnel advised us that the management analyst hired on January 16, 2017 is in the transition process and is still getting acclimated to IAPro and bureau procedures. To date, MCSO has not yet published a semi-annual report. The report, when published, should identify problematic trends or patterns, and ensure that the aggregate data is reported as required. The proposed PSB Operations Manual contains a position for the analyst that will perform the various audit functions required by this Order.

See Paragraph 251 below, regarding the additional summary information, analysis, and aggregate data PSB is required to assess for the semi-annual public report.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To determine Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period. In two of the cases, MCSO failed to identify and investigate potentially serious allegations. In all of the 42 cases with sustained allegations, the most serious policy violation was used to determine the category of the offense. In cases where multiple violations of policy occurred, this information was also listed on the preliminary discipline document. There were no cases where the exoneration of any offense precluded discipline for other sustained allegations.

***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:** Not in compliance

- CP-2 (Code of Conduct), most recently amended on January 6, 2017.
- CP-3 (Workplace Professionalism), most recently amended on December 15, 2016.
- CP-5 (Truthfulness), most recently amended on December 21, 2016.
- CP-11 (Anti-Retaliation), most recently amended on December 1, 2016.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not in compliance

Compliance with Phase 2 of this Paragraph is determined by a review of completed misconduct investigations conducted by MCSO personnel, the review of attendance by internal investigators at required misconduct training, and the disciplinary backgrounds of internal investigators.

During the last reporting period, we found that in 69 (58%) of the completed cases, the PSB Commander had not ensured that there was full compliance with MCSO policy and all requirements of the Second Order. We acknowledged that the PSB Commander reviewed a substantial number of cases that were initiated prior to the Second Order, and many components of the investigative process were not subject to the compliance requirements of the Second Order. Compliance improved in those cases that were both initiated and completed after the Second Order.

During this reporting period, we reviewed 123 administrative misconduct investigations and seven criminal misconduct investigations. All were completed after the issuance of the Second Order on July 20, 2016. All but 28 of these cases were both initiated and completed after July 20, 2016. We found that in 49 (38%) of the 130 cases reviewed, the PSB Commander had not

ensured there was full compliance with MCSO policy and all requirements of the Second Order. While MCSO still falls short of full compliance with all requirements of the Second Order, compliance has improved significantly since the last reporting period.

We recognize that there are a number of factors that impact the PSB Commander's ability to ensure full compliance in all cases. Some of the factors include the inherited backlog of cases, the necessary reliance on other members of PSB command staff to conduct some case reviews, investigations initiated prior to the Second Order that were not subject to all compliance requirements, and a lack of training for some who conduct internal investigations.

While there have been many challenges and barriers to ensuring that internal investigations are reaching full compliance with both MCSO policy and the Order of the Court, PSB has made a concerted effort to improve MCSO's compliance. Were it not for many of the corrective emails sent out by PSB to Districts and divisions conducting cases, many cases that we ultimately found in compliance would not have been.

Beyond the technical and procedural compliance issues we found in our reviews, there are several areas where we continue to note deficiencies. Some examples include:

- Failure to locate and interview all potential investigative leads or witnesses;
- Failure to properly investigate all potential policy violations;
- Investigators posing leading questions to principals and other parties interviewed; and
- Findings that are not supported by the facts of the investigation.

A Monitoring Team member meets personally with the PSB Commander weekly to discuss Class Remedial Matters. We also use this opportunity to discuss other ongoing related concerns that affect compliance with the Second Order. The PSB Commander is attentive to our concerns and we have observed that she takes immediate action when we bring serious concerns to her attention.

During our October 2016, January 2017, and April 2017 site visits, we initiated meetings with District and Division command staff, MCSO executives, and PSB command and investigative personnel to update them on our identification of training and performance issues that adversely affect compliance. We continue to find those in attendance receptive to the information and concerns we have brought forward. It is evident from the increased compliance this reporting period by PSB that they are continuing to address the concerns we have brought forward. While we are encouraged by the responsiveness of PSB, the PSB Commander is responsible for ensuring the quality of all internal investigations – not only those conducted by PSB personnel. During our January and April 2017 site visits, PSB personnel in attendance at our discussion on case deficiencies included Detention supervisors who review investigations completed by Detention personnel assigned to PSB. The PSB Commander has also assigned a sworn lieutenant in the bureau to serve as a secondary reviewer of these Detention cases and additional training will be provided to these Detention supervisors as well.

The cases investigated by sworn supervisors outside of PSB continue to be concerning. While we agree that the forthcoming training will help improve the quality of these investigations, there must also be increased accountability for these supervisors and command personnel.

While the PSB Commander is held responsible for compliance with all requirements for the completion of internal investigations, she must have the cooperation and commitment of District and Division personnel and executive staff for MCSO to achieve compliance with this Paragraph.

During our October 2017 and January 2017 site visits, PSB staff sufficiently communicated that they are properly outsourcing those cases where a conflict of interest exists. PSB has contracted with a qualified private vendor to conduct these investigations. Additionally, PSB has outsourced investigations to another local law enforcement agency. PSB updated us on these investigations during our April 2017 site visit, and the cases remain in progress.

MCSO has not delivered the required misconduct training, and the revisions to IA policies remained in progress during this reporting period. These policies are now near completion, and we anticipate that MCSO will finalize and approve them during the next 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 that would be prohibited from conducting such investigations due to their backgrounds. Two supervisors were determined to be ineligible to conduct internal investigations. During our January and April 2017 site visits, PSB personnel reported they had not identified any additional MCSO members who are disqualified from conducting misconduct investigations. We developed a standing monthly document request to ensure future Monitor notification of MCSO employees prohibited from conducting misconduct investigations in compliance with this Paragraph.

***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:** Not in compliance

- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Deferred

In conjunction with this Paragraph, Paragraph 178 mandates that within three months of the finalization of policies consistent with Paragraph 165 of the Order, all PSB personnel will receive 40 hours of comprehensive training. Paragraph 178 requires training of all supervisors within three months of the finalization of policies. However, as documented in Paragraph 165, we and the Parties continue to review and revise a multitude of policies and manuals. Paragraph 178 requires sufficient trained personnel in PSB within six months of the entry of the Order (three months of the finalization of policies), which would have been January 20, 2017. MCSO cannot commence with the required training of sufficient personnel because many of the applicable policies have not been finalized and published. We are working diligently with MCSO to complete the training curricula and processes. During our January 2017 site visit, MCSO personnel indicated that they anticipated the training to commence during this reporting period. However, during our April 2017 site visit, we and MCSO were continuing to advance and finalize the training curricula, to include scenario-based training modalities and testing.

During our April 2017 site visit, we inquired of the PSB Commander whether any staffing issues existed. The PSB Commander communicated that, due to a reorganization of MCSO and promotions, PSB is presently understaffed by three sergeants' positions. The PSB Commander has made a formal request for recouping the three positions, and anticipates that will occur in July 2017. However, the PSB Commander still anticipates at that time PSB will be understaffed by three lieutenants on the Detention investigative side of PSB, and three sergeants on the sworn investigative side of PSB. The PSB Commander elaborated that there is a concern about a minimal pool of sufficiently qualified candidates; she believes that the volume of civilian support staff resources is adequate. The PSB administrator previously explained that any additional staffing to PSB would be automatically logged into the IAPro database. In place of monthly document requests, we will continue to inquire about the adequacy of staffing during our site visits. Additionally, our future site visits will include review of PSB staff training files after the mandatory training is completed.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To determine Phase 2 compliance with this Paragraph, we reviewed 123 completed administrative misconduct investigations conducted by MCSO. In January 2017, we solicited information about a private investigator that has contracted with PSB for purposes of conducting investigations related to this Paragraph; and during our April 2017 site visit, we inquired about any additional licensed contract investigators that MCSO has hired. Finally, we also inquired about the status of cases that have been referred to another regional law enforcement agency for purposes of compliance.

We did not consider any of the 123 completed cases to be not in compliance with this Paragraph. All completed misconduct investigations were appropriately assigned to MCSO investigators.

During our April 2017 site visit, the PSB Commander indicated that the MCSO had not found any necessity to hire additional contract investigators beyond the one investigator that had been already hired and referenced in our previous quarterly status report. The PSB Commander will continue to serve as MCSO's single point-of-contact and assist with liaising and scheduling for the contract investigator. The private investigator will advance the investigations to the level of recommending findings. Agreements have been made that any criminal misconduct that is identified by the private investigator will be addressed.

PSB outsourced three misconduct investigations to a separate regional law enforcement agency. During our April 2017 site visit, the PSB Commander explained that, of the three cases, one was closed, one was completed and forwarded to the MCSO Compliance Division, and one was determined to be a duplicate case under investigation by the Court's Independent Investigator; and thus the investigation was discontinued by the outside agency and all documentation to-date was provided to the Independent Investigator.

***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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

The PSB Commander continues to exhibit exceptional qualifications and capabilities to fulfill the requirements of this Paragraph. Despite being faced with a monumental responsibility, the PSB Commander has consistently demonstrated the ability to identify priorities, immediately address serious compliance issues, ensure that PSB resources are used appropriately, address ongoing compliance issues in those investigations conducted outside of PSB, and manage those investigations determined to be Class Remedial Matters. PSB has been reorganized to create specific assignments and provide additional oversight and review of internal investigations. We have noted the improvement in investigative processes and outcomes under the guidance of this Commander, and we are optimistic that additional improvement will occur. As we have previously noted, MCSO must support the PSB Commander with resources and executive leadership.

**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.*

**Phase 1:** Not applicable

**Phase 2:** Deferred

The MCSO has made a final decision to use the former East Court Building Library as an off-site PSB facility. PSB has designated a command officer who will serve as the project manager. During our April 2017 site visit meeting, the commander met with the architect to discuss plans to retrofit the facility.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

During our January 2017 site visit, we met with the PSB Commander and inquired about MCSO's efforts to comply with this Paragraph. We had learned in October 2016 that MCSO had reviewed the qualifications of all those who might be required to conduct internal affairs investigations. PSB staff had, at that time, identified two MCSO supervisors who were not presently assigned to PSB and who were disqualified from conducting misconduct investigations. MCSO provided written notification to us regarding the two supervisors.

At our January and April 2017 site visits, the PSB Commander stated that there had not been any additional MCSO supervisors, or command or executive personnel who had been disqualified. PSB staff is developing a formal review process to ensure that, at the time a minor misconduct case is referred to a District for investigation, the District Captain is notified of any supervisors under his/her command who are ineligible to conduct misconduct investigations. A standing monthly document request has been written to ensure future Monitor notification of MCSO employees prohibited from conducting misconduct investigations in compliance with this Paragraph.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not in compliance

To determine Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations that were completed by MCSO personnel during this reporting period. All 123 administrative misconduct investigations we reviewed were completed after the issuance of the Second Order. PSB investigated 74 of these cases. District or Division supervisory personnel not assigned to PSB investigated the remaining 49. Seventy-two of the cases were externally generated, and 51 were internally generated complaints. Ninety-eight of these investigations were both initiated and completed after the issuance of the Second order. As previously noted in this report, compliance for all CRM cases will be reported in Paragraphs 275-289.

While MCSO remains not in Phase 2 compliance for this Paragraph, we noted that with the exception of one Subparagraph, MCSO improved in compliance.

Paragraph 200.a. requires that misconduct investigations be conducted in a rigorous and impartial manner. Twelve investigations during this reporting period did not comply with the requirements of this Subparagraph.

Paragraph 200.b. requires that investigations be approached without prejudging the facts or permitting preconceived impressions. Six completed investigations during this reporting period did not comply with the requirements of this Subparagraph.

Paragraph 200.c. requires that investigators identify, collect, and consider all relevant evidence. Two completed investigations during this reporting period did not comply with the requirements of this Subparagraph.

Paragraph 200.d. requires that investigators make reasonable attempts to locate and interview all witnesses. Seven completed investigations during this reporting period did not comply with the requirements of this Subparagraph.

Paragraph 200.e. requires that investigators make reasonable attempts to interview civilian complaints in person. Eleven completed investigations during this reporting period did not comply with the requirements of this Subparagraph.

Paragraph 200.f. requires audio- and video-recording of all interviews. Thirty-two completed investigations during this reporting period did not comply with the requirements of this Subparagraph.

Paragraph 200.g. requires that when conducting interviews, investigators avoid asking leading questions or questions that may suggest justification for the alleged misconduct. Ten completed investigations during this reporting period did not comply with the requirements of this Subparagraph. This is the only Subparagraph in this Paragraph in which MCSO did not experience an increase in compliance from the last reporting period. We further reviewed this compliance requirement, and discovered that there was the repetitive use of leading questions by a single investigator in multiple cases. We addressed this issue with the PSB Commander as soon as it became evident. The PSB Commander took immediate action to ensure that this investigator receives additional training in proper interviewing techniques and assigned a secondary investigator to monitor and assist this employee. We are confident that the issue is being addressed, and we note the immediate action taken. We will continue to review investigations conducted by this investigator to ensure that the issue has been resolved.

Paragraph 200.h. requires that proper credibility determinations be made. Seven completed investigations during this reporting period did not comply with the requirements of this Subparagraph.

Paragraph 200.i. requires that investigators attempt to resolve all material inconsistencies. Two completed investigations during this reporting period did not comply with the requirements of this Subparagraph.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To determine Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel were completed during this reporting period.

We identified two of the 123 completed investigations where we interpreted an automatic preference for an employee's statement 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. There were no instances where we identified that any witness, complainant, or deputy had a history of deception or untruthfulness in any legal proceeding, misconduct investigation, or other investigation.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To determine Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

We identified only one completed investigation where additional potential misconduct that was not part of the original allegation was discovered but not investigated. This is a significant improvement from the eight cases identified during the last reporting period.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To determine Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

There were no indications in any of the 123 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.

***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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** Not in compliance

To determine Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

Of the 123 cases, 62 exceeded the completion timeframes required by this Paragraph. Thirty-five of these investigations had an approved extension request. Twenty-seven (22%) of the completed investigations were not completed within the required timeframes and did not contain an approved extension. While this is an improvement from the last reporting period, MCSO has not yet achieved Phase 2 compliance with this Paragraph. We noted during our reviews that in some cases where an extension was not requested, doing so would likely have been appropriate. During our April 2017 site visit, we reminded PSB and District and Division command personnel of these timeline requirements, and encouraged them to ensure that they request extensions when it is appropriate to do so.

**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:** Not in compliance

- Professional Standards Bureau Operations Manual, currently under revision.
- GH-5 (Early Identification System), most recently amended on March 24, 2017.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

We determine compliance with this Paragraph by assigning a Monitoring Team member to observe a real-time demonstration of the IPro database. The IPro 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 April 2017 site visit, Team representatives met with the PSB lieutenant who is the primary administrator for the IPro database system. The lieutenant is assisted by a civilian analyst. The demonstration that was provided in April 2017 once again represented IPro as a technology instrument that meets the compliance criteria of this Paragraph, to include logging of critical dates and times, alerts regarding timelines and deadlines, chronological misconduct investigation status, notifications, and dispositions. Regarding timelines, the PSB lieutenant has incorporated a practice whereby at the time a PSB investigation is initiated, the Chief Deputy and commander of the principal employee are notified of the commencement of the investigation and the associated case number. The case number then serves as the primary reference for additional information in EIPro, a software program used by supervisors and managers in MCSO. A monthly review is conducted to audit timelines associated with open investigations. Moreover, the tracking system provides estimates of key timelines for all investigators to ensure that they learn of previous and upcoming investigative milestones. We also note that the system is secure, but can be accessed remotely with the correct permissions. The PSB Commander noted that all PSB investigators have direct access to the IPro system and each uses the system to manage their individual investigations and caseloads.

The civilian PSB management analyst's primary responsibility is the administration of the centralized tracking system. In addition, as a failsafe measure, all PSB and Division investigators can access the electronic Blue Team database – a system that integrates with IPro – at any time to view the assignment and status of administrative investigations to which they are assigned. In response to our previous concerns about ensuring system administration redundancy, PSB has trained two lieutenants to administer the system, in addition to the analyst.

Finally, we continue to receive monthly notifications from PSB regarding closed administrative investigations, and we evaluate 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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2: In compliance**

To determine Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

Paragraph 206.a. requires a written description on the incident be included in the investigative report. All completed investigations that we reviewed complied with this requirement.

Paragraph 206.b. requires documentation of all evidence gathered, including all known information about witnesses. One of the 123 completed investigations did not comply 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 of the 123 completed investigations 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 123 of the completed investigations that 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. One of the 123 completed investigations did not comply with the requirements of this Subparagraph.

Paragraph 206.f. requires that investigative reports include a precise description of evidence that supports or detracts from credibility assessments. One of the 123 completed investigations did not comply with the requirements of this Subparagraph.

Paragraph 206.g. requires that when material inconsistencies must be resolved, a precise description of the evidence be included in the report. Two of the 123 completed investigations did not comply with the requirements of 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. During the last reporting period, numerous investigations did not provide this information, and we discussed this ongoing non-compliance with PSB. PSB personnel agreed that when the checklist is revised, they would include these requirements. In the interim, the PSB Commander has advised investigators to include this information in the report narratives when applicable.

During this reporting period, nine investigations included identified policy, training, tactical, or equipment concerns. In all cases, documentation was included that indicated how the issue was being addressed. None of the remaining 114 investigations had identified concerns relative to compliance with 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. In the 123 investigations that we reviewed for this reporting period, we did not note any complaint where this Subparagraph was applicable.

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. All 42 of the 123 administrative investigations that we reviewed for this reporting period that had sustained allegations 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. Only one of the 123 investigations that we reviewed for compliance with this Subparagraph did not comply with this requirement.

***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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 misconduct investigations conducted by MCSO personnel and completed during this reporting period.

During the last reporting period, 63 of the 119 completed investigations did not comply with all or parts of the requirements of this Paragraph. During our January 2017 site visit and in other meetings with PSB, we discussed this Paragraph requirement. PSB personnel informed us that they would include this information in the checklist when it is revised. In the interim, the PSB Commander directed investigative personnel to include this information in the narrative portion of the report.

During this reporting period, we found that MCSO is now meeting all the requirements of this Paragraph. Of the 123 investigations that we reviewed, we noted that MCSO investigators properly identified those cases in which there were policy, training, or equipment concerns. In each case, investigators properly noted the concern and forwarded it to the appropriate MCSO Division or Unit for further follow-up or resolution. We did not note any cases where we believe that concerns identified in this Paragraph existed and were left unaddressed by MCSO.

**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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** Not in compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

During the last reporting period, we did not concur with the findings in 20 (17%) of the 119 completed cases.

During this reporting period, we did not concur with the findings in 14 (11%) of the 123 cases that were completed after the issuance of the Second Order. We evaluate compliance with this Paragraph against the standard of whether a finding was made, and whether the finding was correct. As during our previous site visits, we will discuss those cases where we disagree with the findings with PSB personnel during our next site visit.

**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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations not conducted by PSB personnel and completed during this reporting period.

All 49 of the investigations completed outside of PSB were forwarded to PSB as required and all contained the approval of the responsible District or Division Commander. As noted in the last reporting period, and found again during *this* reporting period, many of the District-level investigations were not in compliance with various requirements of the Second Order – as indicated throughout our report. However, we assessed MCSO’s compliance with this Paragraph based on District-level 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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 74 administrative misconduct investigations conducted by PSB investigative personnel and completed during this reporting period. All 74 complied with the requirements of this Paragraph.

**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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** Not in compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

In 20 (17%) of the 119 completed cases for the last reporting period, we did not concur with the findings by MCSO. We discussed these cases with MCSO personnel during our April 2017 site visit. We also discussed with MCSO that the PSB Commander or District Captains do not appear to use a formal mechanism to ensure that the investigator's supervisor has taken appropriate action to address the issues as required by this Paragraph. The issue will be included in the training curricula required under Paragraph 178.

During this reporting period, we did not concur with the findings in 14 cases. We determined that Commanders outside of PSB did not identify inadequacies in any of the 49 investigations that were conducted by their personnel. In 32 of these 49 investigations, we noted some concerns; we disagreed with the findings in seven cases. Many of these investigations required corrections – and in some cases, additional investigation – after review by PSB. We anticipate that the pending training will address some of the concerns we have identified in these cases.

In those cases investigated by PSB, we disagreed with the findings in seven of the 74 cases PSB investigated for this reporting period; all seven cases were investigated by Detention supervisors assigned to PSB. PSB has acknowledged the necessity to provide further training and mentoring to Detention personnel who conduct administrative investigations, as some lack necessary investigative experience. Another level of review has also been added for these investigations. We agree with PSB's approach to addressing these concerns.

***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:** Not in compliance

- GB-2 (Command Responsibility), most recently amended on February 1, 2017.
- GC-4 (Employee Performance Appraisals), currently under revision.

**Phase 2:** Deferred

To assess Phase 2 compliance with this Paragraph, we reviewed 127 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

None of the investigations that we reviewed for this reporting period included any allegations that an internal affairs investigator had conducted a deficient misconduct investigation that was the basis for an internal investigation.

Unless a formal misconduct investigation is associated with MCSO policy and the requirements of the Second Order, our review of misconduct investigations does not disclose documentation about what corrective action may have occurred as a result of conducting a deficient investigation or a failure to improve. During our site visits in January and April 2017, we discussed with District Captains and the PSB Commander the necessity to document any corrective action that is taken as a result of an investigator failing to conduct a proper investigation. The PSB Commander assured us that, along with Paragraph 211, internal methods to ensure compliance with this Paragraph will be included in the training curricula being developed in compliance with Paragraph 178. We anticipate that Blue Team will be used to document any corrective actions taken. We initiated a monthly document request to ensure that MCSO notifies us of documentation related to this Paragraph for future reporting periods.

***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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

Of the 123 investigations, 74 were investigated by PSB personnel, and 49 were investigated by 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.

All 49 District-level approved cases were forwarded to PSB and reviewed by PSB as required.

Nine cases were reviewed and returned by PSB personnel for additional investigation.

PSB personnel returned 21 cases that needed corrections, proper documentation, or other formatting changes.

PSB documented all of the cases returned to District investigators for additional investigation or corrections, and this information was included with the investigation.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

During our January 2017 site visit, we requested – and PSB agreed – to ensure adequate information regarding the return and/or reassignment of investigations would be thoroughly documented in future completed cases.

Our analysis for this reporting revealed that of the 49 investigations conducted outside of PSB, 30 investigations were returned by PSB to the original investigating supervisor for further investigation, analysis, or corrections. PSB did not assign or reassign any investigations to another supervisor during this reporting period.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 49 administrative misconduct investigations conducted by MCSO personnel outside of PSB and completed during this reporting period.

Three of the 49 completed misconduct investigations conducted outside of PSB resulted in findings of sustained. In all of these cases, the reports included documentation that appropriate discipline or corrective action was taken.

Two of the cases investigated outside of PSB resulted in the need for employee training. In both cases, the identified training occurred. In one case, the investigation determined that MCSO might lack adequate policy regarding impound procedures for flammable items. Both PSB and Property Management personnel wrote memoranda of concern, and conducted research; and MCSO appropriately changed its procedures.

***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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel and completed during this reporting period.

Seventy-four of the completed investigations were conducted by PSB, and 36 of these resulted in a sustained finding against one or more MCSO employees.

In all 36 sustained investigations, the PSB Commander ensured appropriate discipline and/or corrective action was recommended. The final determination of the range of discipline was provided by the PSB Commander, but the PSB Commander cannot ensure appropriate discipline or corrective action are the final *outcomes* of a Pre-Determination Hearing (PDH), as these hearings are held after the initial recommendations for discipline but prior to the imposition of discipline. The hearing officer has the authority to change the findings or reduce the discipline; and in two cases this reporting period, we disagreed with his decision to do so.

Of the 74 completed misconduct investigations conducted in PSB, 11 indicated policy, training, tactical, or equipment concerns. In all of these cases, the report included necessary documentation regarding how these concerns had been, or were being, addressed. In addition, the PSB Commander ensured discipline and/or corrective action was taken in all 11 cases.

We requested during our January 2017 site visit that PSB ensure that adequate information regarding compliance with the Paragraph would be included in the case narratives. We found that in all of the 11 cases noted that revealed necessary training or other non-disciplinary intervention was appropriate, the information was included in the report as required.

**Paragraph 217.** *The Professional Standards Bureau shall conduct targeted and random reviews of discipline imposed by Commanders for minor misconduct to ensure compliance with MCSO policy and legal standards.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not applicable

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.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To determine compliance with this Paragraph, we observed that PSB maintains both hardcopy and electronic files intended to contain all documents required for compliance with this Paragraph.

During our January 2017 site visit, a Monitoring Team member inspected the file room where hardcopies of internal administrative investigations are kept. A random selection of case files verified that PSB was maintaining files as required. A Monitoring Team member also has access to IAPro and verified that case files are maintained in an electronic format. During our April site visit, a Monitoring Team member again verified that administrative investigation reports and files were being appropriately maintained.

**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: Not in compliance**

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2: Deferred**

To assess Phase 2 compliance with this Paragraph, we reviewed completed misconduct investigations conducted by MCSO personnel.

During the first reporting period under the Second Order (July-September 2016), only 19 administrative investigations were completed after July 20, 2016. Three of these investigations, all involving Detention personnel, were sustained. A written reprimand was the disciplinary outcome in all three cases.

During the reporting period covering October-December 2016, there were 119 administrative investigations that were completed on or after July 20, 2016. While 42 investigations had sustained findings, seven involved employees who had either resigned or were deceased at the time of the sustained findings. The remaining 35 investigations resulted in discipline being assessed. These investigations involved misconduct by sworn, Detention, and civilian employees. Discipline ranged from coaching to dismissal.

During this reporting period, all 123 administrative investigations were concluded after July 20, 2016. All but 25 were also initiated after July 20, 2016. Forty-two cases resulted in sustained findings against one or more members of MCSO. Five of the sustained findings did not have a disciplinary outcome as the employee with sustained allegations left MCSO employment prior to a disciplinary finding. In the remaining 37 cases, discipline ranged from coaching to dismissal.

We are deferring our Phase 2 compliance assessment of this Paragraph until MCSO finalizes and publishes relevant policies regarding Discipline Matrices.

Paragraph 220.a. requires a presumptive range of discipline for each type of violation. While MCSO has not yet finalized and published the policies that establish a presumptive range of discipline as required for compliance, in the sustained investigations we reviewed that resulted in discipline after July 20, 2016, the PSB Commander determined and documented the preliminary proposed discipline range.

Paragraph 220.b. requires that presumptive discipline be increased if an employee has prior violations. We will defer our Phase 2 compliance assessment with this Subparagraph until MCSO finalizes and publishes the revised Discipline Matrices. We will then assess Phase 2 compliance based on whether administrative investigations comply with this requirement.

Paragraph 220.c. requires that mitigating and aggravating factors be defined. We are deferring our Phase 2 compliance assessment with this Subparagraph until MCSO finalizes and publishes the revised Discipline Matrices, and we can determine whether administrative investigations comply with this requirement.

Paragraph 220.d. prohibits the consideration of any prohibited biases when determining discipline. None of the sustained cases reviewed for compliance during this reporting period that resulted in discipline 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 reviewed for compliance 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 reviewed for compliance during this reporting period showed any indication of 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. None of the sustained investigations resulted in the use of coaching or training as a substitute for discipline required in the current MCSO discipline policy.

Paragraph 220.i. requires that MCSO will not take only non-disciplinary action in cases where the Disciplinary Matrices call for the imposition of discipline. None of the sustained cases reviewed during this reporting period resulted in MCSO taking non-disciplinary action when the Disciplinary Matrices currently in effect called for the imposition of discipline.

Paragraph 220.j. requires that MCSO consider whether non-disciplinary corrective action is also appropriate in a case where discipline has been imposed. We reviewed 37 sustained investigations for this reporting period, and found that MCSO investigators identified four cases where non-disciplinary corrective action was also appropriate. All were identified as training issues and addressed properly.

Paragraph 220.k. requires that any departure from the discipline recommended under the Disciplinary Matrices be justified in writing and included in the employee's file. Sixteen of the 37 sustained cases had recommendations for serious discipline. In five of these cases, the appointing authority deviated from the findings or preliminary discipline range. In two cases, the appointing authority appropriately changed one of the findings in each investigation from not sustained to sustained. He completed the required documentation, and we concur with his decision. In one case, the appointing authority reduced a disciplinary decision to a lesser suspension than initially recommended based on the Disciplinary Matrices. In this case, we believe his decision was justified and appropriate. In two cases, we disagree with the final decision by the appointing authority. In one case, there was clear justification for the sustained findings by PSB, and the appointing authority should not have changed the case finding. In the second case, the appointing authority reduced the discipline received by the employee. We disagree that this reduction in discipline was appropriate given the facts of the case and the employee's work history.

Paragraph 220.1. requires that a Disciplinary Matrix for unclassified management employees be at least as demanding as the Disciplinary Matrix for management-level employees. We reviewed the draft policies that will affect discipline for unclassified management employees; and when finalized and approved, they will meet the requirements of this Paragraph. We are continuing to defer Phase 2 compliance assessment for this Subparagraph until MCSO finalizes and publishes its revised Discipline Matrices, and we can determine whether disciplinary sanctions for unclassified management employees comply with this requirement. During this reporting period, no administrative investigations involving unclassified management employees were completed and submitted.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed completed misconduct investigations conducted by MCSO personnel.

During the last reporting period, we reviewed 35 sustained misconduct investigations completed after July 20, 2016 that resulted in discipline. In four of those cases, we believed MCSO had failed to properly consider each sustained misconduct allegation as a separate offense for purposes of imposing discipline as required. We discussed these concerns with MCSO during our April 2017 site visit.

During this reporting period, we reviewed 37 sustained misconduct investigations that resulted in discipline for current MCSO employees. We found that MCSO met the requirements of this Paragraph for this reporting period.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed completed misconduct investigations conducted by MCSO personnel.

During the previous two reporting periods, we reviewed a total of 38 sustained investigations that were completed by MCSO after July 20, 2017. In all but one of these investigations, we found that the PSB Commander determined and documented in writing the presumptive range of discipline based on the Discipline Matrices still currently in effect. The PSB Commander included the category and offense number in the recommendations, and the investigative file included the employee's disciplinary history.

During this reporting period, we reviewed 37 sustained investigations that were completed after July 20, 2016 where discipline was assessed. In all but one of these cases, MCSO provided documentation verifying that the PSB Commander determined and documented in writing the presumptive range of discipline based on the Discipline Matrices currently in effect. All of the documentation provided included the category, offense number, and employee's discipline history.

#### ***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.*

##### **Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-17 (Employee Disciplinary Procedure), currently under revision.

##### **Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we review completed misconduct investigations conducted by MCSO personnel where a Pre-Determination Hearing (PDH) occurs.

During the reporting period covering July-September 2016, three sustained investigations completed after July 20, 2016 resulted in discipline. None of the three cases contained any recommendation for serious discipline by the PSB Commander, and no PDHs occurred.

During the reporting period covering October-December 2016, 35 investigations that were completed after July 20, 2016 resulted in sustained findings and recommendations for discipline. Of these 35, 10 resulted in recommendations for serious discipline as defined in this Paragraph. In all of these cases, a Pre-Determination Hearing was scheduled. In one of the 10 cases, the employee chose not to attend the hearing. In the remaining nine cases, the hearing occurred as required.

During this reporting period, 37 investigations resulted in sustained findings against current employees of MCSO and recommendations for discipline were made. Sixteen of the cases resulted in recommendations for serious discipline as defined in this Paragraph. In all 16 cases, a Pre-Determination Hearing was scheduled as required. In two of these 16 cases, the employee chose not to attend the hearing. In the remaining 14 cases, the PDH occurred as required.

**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.*

**Phase 1:** Not in compliance

- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess compliance with this Paragraph, we review completed misconduct investigations conducted by MCSO personnel.

During the previous two reporting periods, a total of 10 sustained investigations resulted in the recommendation for serious discipline as defined in this Paragraph. In one case, the employee chose not to attend the hearing. In the nine cases where a hearing occurred, the hearing was audio- and video-recorded; and the recording was included in the administrative file as required.

During this reporting period, 16 cases were referred for a PDH based on the serious nature of the sustained violations. In two cases, the employees chose not to attend the hearing. In the 14 cases where a hearing was conducted, the hearing was audio- and video-recorded as required; and the recording was included in the administrative file.

**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.*

**Phase 1:** Not in compliance

- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess compliance with this Paragraph, we review completed misconduct investigations conducted by MCSO personnel.

During the previous two reporting periods, 10 cases resulted in the recommendation for serious discipline. None of the cases resulted in the investigation being returned to the investigator for consideration or further investigation prior to discipline being imposed.

Nine of the 10 cases resulted in a PDH. In one PDH, the principal in the investigation presented a lengthy document alleging that the MCSO employees who had initiated the investigation against him had been untruthful and intentionally omitted facts. The appointing authority determined that, despite the claims made by the employee, the investigation was adequate. The appointing authority upheld the sustained findings and imposed a 40-hour suspension on the employee. The document authored by the employee was forwarded to PSB for further review. We identified numerous concerns with this investigation, the PDH, and the discipline outcome. We discussed this investigation with both PSB personnel and the appointing authority during our April 2017 site visit.

During this reporting period, 16 investigations resulted in the recommendation for serious discipline. In two cases, the employee chose not to attend the hearing. In the remaining 14 cases, a PDH was conducted as required. None of these 14 hearings resulted in new or additional information being presented that would necessitate that the case be returned for further investigation.

***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:** Not in compliance

- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.

**Phase 2:** Not in compliance

To assess compliance with this Paragraph, we review completed misconduct investigations conducted by MCSO personnel.

During the previous two reporting periods, a total of 10 sustained investigations completed after July 20, 2016 resulted in the recommendation for serious discipline and in nine of the cases, a PDH occurred. The appointing authority overturned findings or deviated from the initial discipline determination in five of the nine cases where PDHs occurred. In these five cases, the appointing authority authored a written justification for these decisions, and this document was included with the investigation file.

While the appointing authority provided the written documentation as required, we disagreed with the final decision in all five of these cases, and could not find MCSO in compliance with this Paragraph given these concerns. While in all of these cases, the appointing authority provided a written justification as required and often referenced the employee history in this document, we were concerned with final findings and decisions that fell outside of the standards established by MCSO.

During our April 2017 site visit, we met with both PSB and the appointing authority to discuss our concerns with these five investigations. We found the appointing authority to be attentive to our concerns. We emphasized the need to comply with the policies in existence at MCSO when determining disciplinary outcomes. We also encouraged the appointing authority to provide more detailed written justification in those cases where he determined that a sustained investigation should be changed, or discipline should be mitigated.

During this reporting period, we reviewed 16 completed administrative misconduct investigations that resulted in the recommendation for serious discipline. In all cases, the appointing authority determined the final discipline outcome.

In five of the cases referred for serious discipline, the appointing authority deviated from the findings or preliminary discipline range determined by the PSB Commander. In three cases, the appointing authority changed the final findings; and in two cases, he reduced the disciplinary sanction. In all of these cases, he authored the required justification document. As previously noted in this report, we concurred with two of the cases where he changed the final findings; and concurred with one case where he modified the discipline sanction. We disagreed with one case where the findings were changed, and with one case where the discipline sanction was reduced after the PDH.

While our reviews this reporting period identified a smaller percentage of non-compliance with this Paragraph, MCSO is still not in Phase 2 compliance. We will discuss our concerns with these cases with both PSB and the appointing authority during our July 2017 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.*

**Phase 1:** Not in compliance

- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess compliance with this Paragraph, we review completed misconduct investigations conducted by MCSO personnel.

During the previous two reporting periods, we reviewed a total of 10 sustained administrative misconduct investigations completed after July 20, 2016 where serious discipline was recommended. In one case, the appointing authority did not appropriately consider the past discipline of an employee as required.

During this reporting period, we reviewed 42 administrative conduct investigations where discipline was imposed. The serious sustained allegations in 16 of these investigations resulted in their referral to the appointing authority to conduct a Pre-Determination Hearing. In two cases, the employee did not appear for the hearing. In the remaining 14 cases, the PDH was held as required.

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 considering 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 Disciplinary Matrix. There were no instances where we determined that the member of command staff responsible for conducting the PDH 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 any consideration of the misconduct of others was improperly considered in the disciplinary decisions that were made.

***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.*

**Phase 1:** Not in compliance

- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess compliance with this Paragraph, we reviewed completed misconduct investigations conducted by MCSO personnel.

During this and the last two reporting periods, there were no instances where the Sheriff or his designee rescinded, revoked, or altered any disciplinary decision made by either the Commander of PSB or the appointed MCSO disciplinary authority.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed completed criminal misconduct investigations conducted by MCSO personnel.

During the previous two reporting periods, we reviewed seven internal criminal investigations that were completed after July 20, 2016. Of these seven cases, four investigations were generated based on external complaints, and three were internally generated. In one of the internally generated cases, a District supervisor observed potential criminal misconduct during his investigation of an administrative misconduct complaint. He immediately forwarded the case to PSB for investigation. A companion administrative investigation was initiated as required in all of these cases.

During this reporting period, seven criminal internal investigations were conducted by MCSO. Four resulted from externally generated complaints, and three were internally generated after MCSO discovered potential criminal conduct. All were completed after July 20, 2016. These cases were appropriately investigated by criminal investigators assigned to PSB, and the potential misconduct was brought to the attention of the PSB Commander as required. In all seven cases, an administrative investigation was also initiated as required. None involved someone superior in rank to the Commander of PSB.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not in compliance

To assess Phase 2 compliance with this Paragraph, we reviewed completed misconduct investigations conducted by both criminal and administrative investigators to ensure that they contained appropriate documentation that complies with the requirements of this Paragraph.

During the previous two reporting periods, seven internal criminal investigations were completed by criminal investigators after July 20, 2016. Two of these cases were CRMs. As we were monitoring these two cases as part of our responsibilities under Paragraphs 275-288, we were able to verify on a weekly basis that compliance with this Paragraph was occurring.

However, we determined that in many cases, the administrative investigation is not submitted and reviewed during the same reporting period as the criminal investigation, as administrative investigations are generally finalized after the completion of the criminal investigation. To ensure our ability to confirm that MCSO meets compliance with this Paragraph on an ongoing basis, we discussed this issue with PSB during our January 2017 site visit. To resolve this issue, PSB agreed that even if a criminal investigation had been previously submitted for review, when the administrative investigation was completed and submitted, the criminal investigative report would again be attached to the administrative investigation report. We deferred our compliance finding for the last reporting period.

MCSO now provides us with the criminal investigation at the time they submit the administrative investigation. During this reporting period, we reviewed 10 administrative misconduct investigations where potential criminal conduct had also occurred. Seven criminal misconduct investigations were initiated by MCSO based on the alleged conduct. In the remaining three incidents, the criminal allegations were investigated by other law enforcement agencies, as the alleged criminal acts occurred in their jurisdictions and were reported to them. In all of the administrative misconduct investigations with alleged criminal misconduct investigated by MCSO during this reporting period, we received both the administrative and criminal misconduct investigations for review.

There were no instances in our review of the administrative misconduct investigations where administrative investigators compelled any interview of a principal while the criminal investigation was in progress. One of the investigations was determined to be a possible CRM, and we observed on a weekly basis that MCSO was meeting all requirements of this Paragraph. In two of the eight cases, the entire administrative investigation was held in abeyance without specific authorization by the PSB Commander or consultation with criminal investigators or a prosecutorial agency. We will discuss this concern with MCSO personnel during our next site visit.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

PSB is separated into criminal and administrative sections. Criminal investigators and administrative investigators are housed on separate floors of the building. Criminal investigators have no access to the IAPro database for administrative investigations, and there are separate file rooms for criminal and administrative investigative documents and reports. We verified during our January 2017 site visit that the required separation of criminal and administrative investigations and restricted access to IAPro is in place.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To determine MCSO's compliance with this Paragraph, we review administrative and criminal misconduct investigations conducted by MCSO on a monthly basis.

During the last two reporting periods, we reviewed a total of seven criminal investigations that were completed after July 20, 2016 and subject to the requirements of the Second Order. All had a companion administrative misconduct investigation as required by this Paragraph.

During this reporting period, we reviewed seven criminal misconduct investigations conducted by MCSO personnel. All had a companion administrative misconduct investigation as required by this Paragraph and were completed after July 20, 2016. We found all the criminal investigations to be properly completed. One of the seven investigations resulted in an arrest, five were unfounded, and one was closed as inactive.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

During the last two reporting periods, we reviewed a total of seven criminal investigations that were completed after July 20, 2016 and subject to the requirements of the Second Order. All had a companion administrative misconduct investigation, as required by this Paragraph. All were in compliance with the requirements of this Paragraph.

Five of the criminal misconduct investigations that we reviewed for this reporting period resulted in findings of unfounded. These decisions were supported by the facts of the investigations, video evidence, interviews of involved parties, or other investigative follow-up conducted by investigators. One of the investigations was closed as inactive. This closure finding is used when investigators are unable to establish a suspect or determine that a criminal offense occurred.

In all of the cases that were not submitted to a prosecutorial agency for review, investigators documented in writing their conclusions and decisions to close these cases without submittal. The PSB Commander then approved these decisions in writing.

***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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

During the last two reporting periods, we reviewed a total of seven criminal investigations that were completed after July 20, 2016 and subject to the requirements of the Second Order. All were in compliance with the requirements of this Paragraph.

During this reporting period, we reviewed seven internal criminal investigations – all conducted by PSB personnel – completed after July 20, 2016. One involved the arrest of an Office employee. Upon review of the criminal investigation report, the PSB Commander directed, in writing, that an additional interview be conducted and added to the report. We concur with the submission and charging decision in this case. The case submitted to Maricopa County Attorney's Office for charging involved a Class 5 felony, and the investigation was properly conducted. The MCAO deferred this case to the Attorney General's Office for prosecution and it has been adjudicated through the criminal justice process.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

During the last two reporting periods, two internal criminal investigations were submitted to the MCAO for prosecution. In one case, the MCAO declined prosecution. Upon request by MCSO for an explanation for this decision, MCAO responded that although the investigator had “left no stone unturned, without a video, a confession, or an eyewitness, there was inadequate evidence of identification.” In the second case, MCSO made an arrest and criminal charges were filed by the prosecutorial agency. MCSO was found in compliance with the requirements of this Paragraph for the last two reporting periods.

During this reporting period, we reviewed one internal criminal investigation where an Office employee was arrested and charged with a felony. The case was originally submitted to the MCAO. The MCAO deferred the case to the Attorney General’s Office. This case has been adjudicated through the court system.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To determine compliance with this Paragraph, we observed that PSB maintains both hardcopy and electronic files that are intended to contain all the documents required for compliance with this Paragraph.

During our January and April 2017 site visits, a Monitoring Team member inspected the file rooms where hardcopies of investigations are kept. Criminal and administrative investigation files are stored in separate rooms, and access to these rooms is restricted. A random review of criminal investigation case files during our January site visit verified that PSB is maintaining files as required. A Monitoring Team member also has access to IAPro and previously verified that case files are maintained in an electronic format.

**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

The Monitoring Team 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 the Monitoring Team's 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 the MCSO's complaint process. We distributed complaint process information brochures at our community meeting held during this reporting period, and several attendees took small stacks of the brochures to distribute to their own groups. The program also provides for the Monitoring Team to distribute the brochures at Maricopa County public schools and to offer meetings to social, professional, civic, and faith organizations throughout Maricopa County to discuss the process for filing complaints. 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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

During the last reporting period, we reviewed 119 administrative misconduct investigations conducted by MCSO personnel and completed during the reporting period. MCSO was in compliance with the requirements of this Paragraph.

During this reporting period, we reviewed 123 administrative misconduct investigations. Seventy-two of these investigations were initiated based on a civilian complaint, including some in which the complaints were made by third parties or were anonymous. None of the investigations we reviewed involved an allegation that any MCSO employee had failed to accept a civilian complaint. We did not discover – nor become aware of – any evidence that civilians had attempted to make a complaint to MCSO and the complaint was not accepted.

**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.*

**Phase 1:** In compliance

- GJ-24 (Community Relations and Youth Programs), most recently amended on January 7, 2017.

**Phase 2:** In compliance

The permanent placards were approved during this reporting period, and sent to a vendor for reproduction. MCSO expects to receive the reproduced placards in April for display at MCSO headquarters and all District stations.

The 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 sign language; in person at any District facility or at the Professional Standards Bureau in person, by mail, by telephone, by fax, or online. The placard includes relevant contact information, including telephone numbers, email addresses, mailing addresses, and websites.

**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

- GJ-24 (Community Relations and Youth Programs), most recently amended on January 7, 2017.

**Phase 2:** In compliance

During this reporting period, MCSO successfully executed its plan to distribute complaint forms to deputies to carry in their vehicles. MCSO's plan included: printing the forms; disseminating them to deputies; and ensuring that all deputies understand their obligations to provide individuals with complaint forms and information about how to file a complaint, their name and badge number, and the contact information for their immediate supervising officer.

Also during this reporting period, MCSO advised that the agency completed issuance of cell phones to all supervisors.

*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:** Not in compliance

MCSO has identified a Professional Standards Bureau facility easily accessible to members of the public during this reporting period. The facility is located at 100 West Jefferson, in downtown Phoenix. The County Court facilities in the building are completely separate from the future PSB reception area and offices. The future PSB area is accessible from First Avenue, a major thoroughfare; and there will be no required security screening of individuals entering the building through the First Avenue entrance.

*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 amended on January 7, 2017.

**Phase 2:** In compliance

MCSO has complaint forms available in English and Spanish on the MCSO and Maricopa County websites; and widely available at MCSO facilities, County offices, and 70 public locations where community groups meet. During this reporting period, MCSO implemented its plan for restocking complaint forms at every location.

*Paragraph 243. The Sheriff shall establish a free, 24-hour hotline for members of the public to make complaints.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

The free 24-hour hotline for members of the public to make complaints was established in July 2016 and continued to be operational during this reporting period. A Monitoring Team representative periodically called the hotline during this reporting period, and verified that the hotline is operational in both English and Spanish, and provides instructions in English and Spanish on how to register a complaint. Callers are advised that if the call is an emergency, they are to call 911. Callers are requested to provide their name, phone number and a brief

message about their complaint. If they leave a recorded message, they are advised they will be contacted as soon as possible. If callers do not wish to leave a recorded message, they are provided with a phone 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.

**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.*

**Phase 1:** In compliance

- GJ-24 (Community Relations and Youth Programs), most recently amended on January 7, 2017.

**Phase 2:** In 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.

**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.*

**Phase 1:** In compliance

- GJ-24 (Community Relations and Youth Programs), most recently amended on January 7, 2017.

**Phase 2:** In 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 sign language – in person at any District facility or at the Professional Standards Bureau in person, by mail, by telephone, by fax, or online. The forms provide street addresses, contact numbers, and website information.

**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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** Not in compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 119 misconduct investigations during the last reporting period that were conducted by MCSO personnel and completed during this reporting period. Sixty-six of these complaints were generated by external complainants. Fourteen investigations did not meet the requirements of this Paragraph.

During this reporting period, we reviewed 123 administrative misconduct investigations conducted by MCSO personnel. Seventy-two of these complaints were generated by external complainants. Nine of these externally generated complaints did not meet all the requirements of this Paragraph.

Paragraph 246.a. requires that a civilian complainant receive a written notice of receipt of their 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 their complaint. In six of the 72 external complaints, a complaint receipt was not provided to the complainant within seven days and/or did not include a PSB tracking number. Nine of the 72 external complainants did not receive a notice that contained the name of the investigator and 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 three of the 72 externally generated complaints, the complainant was not provided a notice of the outcome of the investigation even though MCSO had adequate contact information for the complainant.

Paragraph 246.c. requires that PSB notify a civilian complainant of the discipline imposed as soon as permitted by law. In three of the external complaints with sustained findings, the complainant was not provided a notice of the discipline imposed as required.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed 119 administrative misconduct investigations conducted by MCSO personnel and completed during the last reporting period. Sixty-six of those investigations were generated with external complaints. MCSO was in compliance with the requirements of this Paragraph.

During this reporting period, we reviewed 123 administrative misconduct investigations conducted by MCSO. Seventy-two were generated by external complaints. We did not identify any instances where a complainant was discouraged from, or denied, contact with MCSO investigators to determine the status of their complaint, or to request and receive an update.

**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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To assess Phase 2 compliance with this Paragraph, we reviewed completed misconduct investigations conducted by MCSO personnel.

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 the previous two reporting periods, PSB provided a total of seven investigations where potential bias was alleged that did not affect members of the Plaintiffs' class. Six of these investigations were completed after July 20, 2016, and were appropriately tracked as required by this Paragraph.

During this reporting period, PSB completed two investigations where potential bias was alleged that did not affect members of the Plaintiffs' class. Both of these investigations were investigated by PSB, completed after July 20, 2016, and tracked in a separate category as required by this Paragraph.

***Paragraph 249.** The Professional Standards Bureau will track, as a separate category of complaints, allegations of unlawful investigatory stops, searches, seizures, or arrests.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

To determine Phase 2 compliance for this Paragraph, we review a monthly report from PSB that lists closed misconduct investigations that are tracked as including allegations of unlawful investigatory stops, searches, seizures, or arrests. We also review misconduct investigations completed by MCSO on a monthly basis.

During the last two reporting periods, PSB provided a list of six completed misconduct investigations that were tracked in accordance with this Paragraph. The completed investigations were submitted to us and reviewed.

During this reporting period, PSB provided a list containing one completed investigation that was tracked in accordance with this Paragraph. We concur with PSB's assessment that the complaint involved an allegation of an unlawful stop, search, seizure, or arrest. MCSO submitted this case to us for our review.

To ensure that MCSO consistently informs us of both the identification and investigation of complaints relative to this Paragraph, we requested that PSB submit both a list and a copy of any completed investigations in the monthly document production for this Paragraph.

***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.*

**Phase 1:** Not in compliance

- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not in compliance

During our April 2017 site visit, PSB command personnel indicated that the recently hired management analyst is becoming acclimated to IAPro and bureau procedures. PSB anticipated that assessments would begin on July 1, 2017. We will comment on the assessments in our next quarterly status report. PSB has not completed a formal assessment to date as required by this Paragraph.

## **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.*

**Phase 1:** Not in compliance

- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not in compliance

The proposed PSB Operations Manual reviewed by the Monitoring Team identifies the PSB Commander as responsible for preparing the Semi-Annual Public Report on misconduct investigations. The proposed 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.

During our April 2017 site visit, PSB command personnel indicated that they had a draft semi-annual public report on misconduct investigations ready for the Monitoring Team's review. We reviewed the draft report and provided preliminary feedback to PSB.

***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.*

**Phase 1:** Not in compliance

- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not in compliance

PSB provided its template for the information that will be captured from completed misconduct investigations for posting as required on the MCSO website. The following data fields have been identified for public disclosure: IA 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.

During this reporting period, PSB did not make detailed summaries of completed internal investigations readily available to the public in electronic form in a designated section of the MCSO website.

**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.*

**Phase 1:** In compliance

- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.

**Phase 2:** Not in compliance

During our April 2017 site visit, the BIO Commander indicated that BIO is developing a matrix for the inspection of approximately 120 cases. Once the matrix is complete, BIO will conduct the inspection. The date for that inspection has not been set.

**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.*

**Phase 1:** Not in compliance

- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.
- Audits and Inspections Unit Operations Manual, currently under revision.

**Phase 2:** Not in compliance

During our April 2017 site visit, the BIO Commander indicated that the vendor responsible for auditing telephone, email, U.S. Mail, and website complaints is moving along in the process. The second vendor, who will conduct the required in-person testing, did not send anything to MCSO during this reporting period. MCSO informed us that it has scheduled a meeting with the vendor to resolve any remaining obstacles to implementation.

**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.*

**Phase 1:** Not in compliance

- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.
- Audits and Inspections Unit Operations Manual, currently under revision.

**Phase 2:** Not in compliance

BIO has selected and signed contracts with two vendors to develop the required CIT program. The Parties agreed to initiate the CIT program until GH-2 (Internal Investigations) is finalized and approved.

***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.*

**Phase 1:** Not in compliance

- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.
- Audits and Inspections Unit Operations Manual, currently under revision.

**Phase 2:** Not in compliance

BIO has selected and signed contracts with two vendors to develop the required CIT program. The Parties agreed to initiate the CIT program until GH-2 (Internal Investigations) is finalized and approved.

***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.*

**Phase 1:** Not in compliance

- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.
- Audits and Inspections Unit Operations Manual, currently under revision.

**Phase 2:** Not in compliance

BIO has selected and signed contracts with two vendors to develop the required CIT program. The Parties agreed to initiate the CIT program until GH-2 (Internal Investigations) is finalized and approved.

***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.*

**Phase 1:** Not in compliance

- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.
- Audits and Inspections Unit Operations Manual, currently under revision.

**Phase 2:** Not in compliance

BIO has selected and signed contracts with two vendors to develop the required CIT program. The Parties agreed to initiate the CIT program until GH-2 (Internal Investigations) is finalized and approved.

**Paragraph 259.** *MCSO shall not permit current or former employees to serve as testers.*

**Phase 1:** Not in compliance

- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.
- Audits and Inspections Unit Operations Manual, currently under revision.

**Phase 2:** Not in compliance

BIO has selected and signed contracts with two vendors to develop the required CIT program. The Parties agreed to initiate the CIT program until GH-2 (Internal Investigations) is finalized and approved.

**Paragraph 260.** *The MCSO shall produce an annual report on the testing program. This report shall include, at a minimum:*

- 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);*
- the number and proportion of tests in which employees responded inappropriately to a tester;*
- the number and proportion of tests in which employees provided inaccurate information about the complaint process to a tester;*
- the number and proportion of tests in which employees failed to promptly notify the Professional Standards Bureau of the civilian complaint;*
- the number and proportion of tests in which employees failed to convey accurate information about the complaint to the Professional Standards Bureau;*
- an evaluation of the civilian complaint intake based upon the results of the testing program; and*
- a description of any steps to be taken to improve civilian complaint intake as a result of the testing program.*

**Phase 1:** Not in compliance

- GH-4 (Bureau of Internal Oversight), most recently amended on December 14, 2016.
- Audits and Inspections Unit Operations Manual, currently under revision.

**Phase 2:** Not in compliance

BIO has selected and signed contracts with two vendors to develop the required CIT program. The Parties agreed to initiate the CIT program until GH-2 (Internal Investigations) is finalized and approved.

## 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

During this reporting period, the Monitoring Team continued exploring with the CAB members the possibility of retaining a consultant to conduct a study to identify barriers to the filing of civilian complaints against MCSO personnel. One CAB member resigned in October. While CAB awaits the appointment of an additional member, we placed those discussions on hold, but we look forward to continuing these discussions with the CAB during our upcoming site visit.

*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

During this reporting period, the Monitoring Team continued our discussions with the CAB members on how CAB could propose an annual budget. ACLU of Arizona staff offered assistance to CAB from their office to prepare a budget and define budget categories. After the resignation of one CAB member, we placed the discussions on hold, but we look forward to continuing these discussions with the CAB during our upcoming site visit.

## 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.*

**Phase 1:** In compliance

- GB-2 (Command Responsibility), most recently amended on February 1, 2017.

**Phase 2:** In compliance

During this reporting period, consistent with our methodology, for January we reviewed a sample of shift rosters from Districts 1 and 2; for February we reviewed a sample of shift rosters from Districts 3 and 4; and for March, we reviewed a sample of shift rosters from Districts 6 and 7, and Lake Patrol. Monthly and daily rosters showed that deputies were assigned to one single consistent supervisor; and with few exceptions, that supervisors were assigned no more than eight deputies.

**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 February 1, 2017.

**Phase 2:** Deferred

As Paragraph 265 is a general directive that covers many aspects of supervision, there are several requirements covered in other Paragraphs of this Order that directly impact this Paragraph; these requirements must be met before MCSO can establish compliance with Paragraph 265. We have determined that MCSO is in compliance with Paragraphs 83, 85, 89, 93, and 94 as they relate to this Paragraph. In addition, MCSO must be in compliance with Paragraphs 90 and 91, to meet the compliance requirements of Paragraph 265. During this reporting period, MCSO attained Phase 2 compliance with Paragraphs 83 and 85; but did not achieve Phase 2 compliance with Paragraphs 90 and 91.

**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.*

**Phase 1:** In compliance

- GB-2 (Command Responsibility), most recently amended on February 1, 2017.

**Phase 2:** In compliance

To verify Phase 2 compliance with this Paragraph, we reviewed monthly rosters and shift rosters for the first quarter of 2017. We also reviewed the January, February, and March Patrol Bureau shift roster inspection summaries, which discuss the results of BIO's examination of every MCSO shift roster during those months to verify that shifts did not exceed the 1:10 supervisor:deputy ratio. The BIO inspection summary for January, dated February 7, 2017, noted that the compliance rate was 99.91%. The BIO inspection summary for February, dated March 30, 2017, noted that the compliance rate was 99.76%. The BIO inspection summary for March, dated April 5, 2017, noted a 100% compliance rate.

During this reporting period, consistent with our methodology, for January we reviewed a sample of shift rosters from Districts 1 and 2; for February, we reviewed a sample of shift rosters from Districts 3 and 4; and for March, we reviewed a sample of shift rosters from Districts 6 and 7, and Lake Patrol. Monthly and daily rosters showed that deputies were assigned to one single consistent supervisor. With the exception of one shift where one supervisor had 10 deputies, and three shifts where there were nine deputies assigned to a supervisor, Patrol supervisors were assigned no more than eight deputies.

During our reviews of documentation for this quarter, we did not note any supervisor:deputy ratios greater than 1:10. During this reporting period, we did not receive any notification from MCSO with regard to any adjustments related to supervisor:deputy ratios.

**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 February 1, 2017.

**Phase 2:** Not in compliance

Close and effective supervision requires that supervisors consistently apply the concepts established in several Paragraphs of this Order. There are requirements covered in other Paragraphs that directly impact Paragraph 267, and must therefore be in compliance for MCSO to establish compliance with this Paragraph. We have determined that MCSO is in compliance with Paragraphs 83, 85, 89, 93, 94, and 96 as they relate to this Paragraph. During this reporting period, MCSO achieved Phase 2 compliance with Paragraphs 83 and 85, which are interrelated with Paragraph 267. In addition, MCSO must achieve compliance with Paragraphs 90 and 91, to achieve compliance with Paragraph 267.

***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:** Deferred

- Court Implementation Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.
- Bureau of Internal Oversight Operations Manual, currently under revision.

**Phase 2:** In compliance

As of August 1, 2016, MCSO began submitting advance notice of transfers of personnel to and from PSB, BIO, and CID. During this reporting period, MCSO submitted the resumes and disciplinary history of four employees for approval. Two were incoming transfers to CID, one was an incoming transfer to BIO, and one was an outgoing transfer from PSB. We reviewed the documentation submitted for each employee to ensure that each met the requirements of this Paragraph. We approved all of the submitted transfers based on the information provided. During our April 2017 site visit, we learned that two of the transfers to CID that MCSO had received approval for had been cancelled; we therefore did not complete an information verification review for those two employees. We audited the file of one of the employees transferred and verified the accuracy of the information submitted for the employee.

## 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:** Not in compliance

- GD-9 (Litigation Initiation, Document Preservation, and Document Production Notices), currently under revision.

**Phase 2:** Not in compliance

To verify MCSO's Phase 2 compliance with this Paragraph, we reviewed monthly submittals of document preservation notices to MCSO employees for the reporting period. We also reviewed a sample of cases during our April 2017 site visit to verify if a search for the documents identified in the Document Preservation Notice was performed and if responsive documents were appropriately identified and preserved.

Document preservation is set in motion when a party, usually the Maricopa County Attorney's Office, sends a litigation hold notice or written directive to MCSO requesting the preservation of relevant documents or records and electronically stored information, in anticipation of future litigation against the agency. MCAO's standard form sent to MCSO for the preservation of documents is called "Litigation Hold Notices and the Document Preservation Notice Directive." Once the Legal Liaison Section (LLS) receives the litigation hold, the policy deadlines are triggered.

During the last reporting period, MCSO only provided us with the Document Preservation Notice prepared by the LLS at the recommendation of the MCAO attorneys and not the actual litigation hold. During our April site visit, we reached an agreement with MCAO counsel to review a sample of the third-party source documents that generate the litigation holds that the LLS receive from MCAO. Once we conduct this review during our next site visit, we will be able to determine if the Document Preservation Notice includes the accurate information to be preserved.

During this reporting period, we observed that the Document Preservation Notices were transmitted to the Division Commanders expeditiously, usually within the first two days of preparation. However, as we discussed during our April site visit, to determine if MCSO is complying with deadlines set on GD-9, we will need LLS to include in its Document Preservation Notice the date of receipt of the litigation hold.

We and the Parties discussed the most recent version of GD-9 with MCSO during our April site visit. Recommendations that we made on the various iterations of the policy and during our previous site visits remain insufficiently addressed. First, it is important to include the Division Commanders in the discussion of their new responsibilities in light of the policy and what the agency's expectations are for complying with the Order requirements on document preservation and production. We were disappointed to learn during our April 2017 site visit that the Division Commanders played no part in the review of the updated version of GD-9.

Second, LLS needs to take ownership of the document preservation and production process, rather than shifting the responsibility to agency employees. A review of the data provided reflects that the agency transmits the Document Preservation Notice to the different Office components that may have responsive documents, including the records warehouse. However, there is a disconnect between the LLS and the actual search and preservation of documents which occur outside the LLS. There is little or no oversight by the LLS on the actual search for documents, and there are few follow-up inquiries requesting the status of the searches and preservations. LLS does not receive an actual copy of the documents that are preserved and sequestered, rather the documents are sequestered in the individual components that serve as custodians for the information. There is no oversight by the agency on the actual process.

***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:** Not in compliance

- GD-9 (Litigation Initiation, Document Preservation and Document Production Notices), currently under revision.

**Phase 2:** Not in compliance

To verify MCSO's Phase 2 compliance with this Paragraph, we reviewed monthly submittals of requests for documents to MCSO employees for the reporting period and documents drafted by the Legal Liaison Section in search of documents from other divisions of the agency. For this reporting period, we have identified a sample of document requests and requested a copy of the responsive documents sequestered and/or produced.

Paragraph 270.a. requires prompt communication of document requests to all personnel who might possibly be in possession of responsive documents. The most recent GD-9 draft requires the Legal Liaison Section to enter the data into a tracking system within five days and to draft a Document Production Notice within three additional 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 division of MCSO for production. We reviewed the document production for this Paragraph, and LLS is currently using a document called Request for Production of Records in lieu of a Document Production Notice to request the data from personnel who may have responsive documents. At the close of this reporting period, we were able to identify that MCSO has been following the draft policy's new timeframes between the receipt of the request and the transmittal of the Request for Production of Records.

Paragraph 270.b. requires that all requested electronic files be stored, sequestered, and preserved by MCSO through a centralized process. During our January site visit we learned that MCSO was looking into the Open Axes eDiscovery tool, a software program, to aid the agency in identifying responsive documents through an electronic search. During our April site visit, MCSO informed us that LLS has received a demonstration of the software; and that LLS personnel believe it will automate many of the employee reminder requirements in the draft policy. In addition, MCSO maintains that the software would be helpful, as MCSO personnel had learned of its benefits from MCAO, who had been using it for over one year. MCSO was working with the software provider on establishing a pilot program at the LLS, a process that could take approximately three months. MCSO has not yet been able to determine how the Open Axes tool will be implemented – at the LLS level or if it will be rolled out into the Districts. Currently, the LLS is not overseeing the storage, sequestering, and preservation of documents at the District level or at any office outside of LLS. LLS does not require that a copy of the preserved Electronic Stored Information (ESI) be sent to its office to create a centralized depository of data. The agency needs to generate a centralized process for the collection of the ESI to be in compliance with this Section of the Order.

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 conduct a thorough and adequate search of all relevant physical and electronic files. We reviewed a sample of responsive documents for this reporting period, and note that MCSO met the deadlines identified in the draft GD-9 in only 62% of the cases. In 75% of the cases, MCSO forwarded all responsive documents to the requesting party. LLS needs to be more proactive in processing requests within the proposed policy deadlines. The most recent draft of GD-9 places the ultimate responsibility on the employees and Division Commanders, rather than on LLS. We recommended that MCSO establish a checks-and-balances system, wherein LLS is responsible for overseeing the process of document preservation and production – but MCSO has not addressed this recommendation. During our April site visit, we discussed ways in which MCSO could achieve compliance, while at the same time establishing clear guidelines in the policy to hold individual employees accountable for not complying with the policy.

**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:** Not in compliance

- GD-9 (Litigation Initiation, Document Preservation, and Document Production Notices), currently under revision.
- Compliance Division Operations Manual, currently under revision.

**Phase 2:** Not in compliance

The Compliance Division Operations Manual has to be consistent with GD-9. We have not yet been able to make this assessment, as GD-9 and the Operations Manual are still under revision.

**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.*

**Phase 1:** Not in compliance

- GD-9 (Litigation Initiation, Document Preservation, and Document Production Notices), currently under revision.

**Phase 2:** Not in compliance

Although no internal investigations were filed against any MCSO employee during this reporting period for failure to preserve or produce documents, we have yet to ascertain whether MCSO employees are conducting adequate searches for documents. The Legal Liaison Section does not yet have an oversight process in place to determine if employees are conducting adequate and accurate searches for documents.

## 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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

MCSO delivers this training on the E-Policy platform. There remain five individuals who are currently on military leave who require this training. During this reporting period, MCSO maintained a 99% compliance rate with this Paragraph.

## 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.

**Phase 1:** Not applicable

**Phase 2:** In compliance

The Second Order requires oversight by the Monitor for all internal investigations determined to be Class Remedial Matters (CRMs). PSB committed to holding a weekly meeting to discuss existing and incoming complaints to determine which, if any, could be CRMs. During these meetings, PSB personnel also 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. During these meetings, the PSB Commander makes a decision on the classification of the cases.

Beginning on August 17, 2016, PSB has held weekly meetings for this purpose. A Monitoring Team member attends the meetings to provide the oversight required by 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, 2017; and determined that 42 of them met the basic criteria that could make them CRMs. These cases were reviewed during the weekly CRM meetings. In addition, a Monitoring Team member randomly selected an additional 52 cases from the remaining 400 pending cases and concurred with PSB's assessment that they did not meet the basic criteria that could make them 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. By the end of the reporting period, nine cases had been determined to be CRMs and one other was pending a CRM decision. The remaining cases had been determined not to be CRMs.

During the last reporting period (covering October and December 2016), an additional 23 cases were reviewed as possible CRMs. At the end of the reporting period, one of these cases had been determined to be a CRM, nine were pending a CRM decision, and 13 cases had been determined not to be CRMs.

During this reporting period, an additional 30 cases were reviewed as potential CRM cases. Nine were determined to be CRMs. As of the end of this reporting period, a total of 115 cases were reviewed as potential CRMs since July 20, 2016. Twenty were determined to be CRMs, four are pending a CRM decision, and 91 were determined not to be CRMs.

A total of 12 CRM cases have been closed since July 20, 2016. Three had sustained findings on a deputy who is deceased. Two resulted in sustained findings against current deputies. In one of these cases, the deputy was terminated as a result of conduct discovered by investigators during the investigation. The conduct for which the employee was terminated involved a sustained truthfulness allegation. In the second case, the sustained finding was for an inappropriate comment (profanity) made by the deputy during a contact with a community member. This conduct, while inappropriate and the allegation sustained, was not related to any bias. We approved the decisions regarding the classifications – and where appropriate, findings – on all of the cases we reviewed.

During the weekly 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 Monitoring Team members. In all cases where we have provided oversight since July 20, 2016, we have concurred with the decisions made by the PSB Commander regarding the case classifications and findings. We have also noted that as the investigators continue to become more familiar with the requirements for CRM investigations, and all other requirements for internal investigations, their investigations continue to improve, their briefings contain additional relevant information, and there is less need for any questions or input from us.

**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.*

**Phase 1:** Not applicable

**Phase 2:** In 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 Monitoring Team member reviews the new cases that are presented each week. There has been no need for us to independently identify CRMs, as PSB has consistently properly identified and reported these cases as required.

**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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

During the weekly 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 during the weekly meetings, and we have found that their briefings generally include all appropriate information. They have been responsive to any questions from Monitoring Team members during the meetings, and have responded appropriately to any suggestions we have brought forward. There has been no need for us to independently conduct any review, research, or investigation; as PSB is consistently properly identifying and investigating these cases.

**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, there were nine new cases that PSB determined were CRMs. We concurred with the decision of the PSB Commander in all cases and provided the required written notice to the Court and the Parties. Counsel for MCSO appealed the CRM classification on four cases. All involved Detention personnel as principals. We continued to monitor these cases while they were under appeal. As with all other cases classified as CRMs to date, the decision to classify these cases as CRMs was made by the PSB Commander; and we concurred with the decisions. The Court determined that since the determination to classify these cases as CRMs had been made by MCSO, not the Monitor, there was no action necessary and all remained classified as CRMs.

**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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not in compliance

To evaluate Phase 2 compliance with this Paragraph, a Monitoring Team member has attended each weekly meeting conducted by PSB to discuss Class Remedial Matters. PSB has consistently provided thorough briefings, and the PSB Commander has made appropriate decisions regarding these matters.

We reviewed four completed CRM cases during this reporting period. One had a sustained finding resulting in a coaching. The conduct in this case was the use of a single profane word that was not of a bias nature. Two cases had not sustained findings and one resulted in a combination of exonerated and unfounded findings. We reviewed and concurred with all of these findings.

We reviewed all four of the completed CRM cases for compliance with the requirements specific to the investigation of CRMs and all requirements for administrative misconduct investigations. All four of the investigations were properly investigated and completed. All four met all requirements specifically related to the investigation of CRMs. Each case report we reviewed was consistent with the briefings that had been provided on the cases during the weekly CRM meetings. The investigators continue to conduct appropriate follow-up on these cases, expend extensive efforts to locate and contact all involved parties and witnesses, and provide detailed information on the allegations and the justifications for findings in their investigative reports.

However, only two of the four cases completed during this reporting period were in full compliance with all requirements for administrative misconduct investigations. The two cases not in compliance were missing one or more of the required components of the Second Order – primarily timely notifications to complainants regarding the investigative process, and completing timely investigations. While none of the missing components would result in a change in the findings or the case outcomes, they prevent a finding of Phase 2 compliance for this Paragraph. We have discussed the areas of compliance that are missing with PSB.

***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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**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

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not applicable

A total of 12 CRM cases have been closed since July 20, 2016. Three had sustained findings on a deputy who is deceased. Two resulted in sustained findings against current deputies. In one of these cases, the deputy was terminated as a result of conduct discovered by investigators during the investigation. The conduct for which the employee was terminated involved a sustained truthfulness allegation. In the second case, the sustained finding was for an inappropriate comment (profanity) made by the deputy during a contact with a community member. This conduct, while inappropriate and the allegation appropriately sustained, was not related to any bias conduct. We reviewed and approved all of these disciplinary findings.

**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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

During this, and the last two reporting periods, a Monitoring Team member attended all weekly CRM meetings conducted in an appropriate location determined by MCSO. PSB also provided a password and access to the IAPro system to a Monitoring Team member so that we can complete independent case reviews when necessary.

PSB personnel continue to be professional and responsive to all input, questions, or concerns we have brought forward.

**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

As of the end of this reporting period, there have been five CRM cases with sustained findings. Three involved a deputy who is now deceased and no disciplinary findings were made. Of the two remaining cases with sustained findings, one resulted in the termination of the employee for conduct not related to any bias, and the second resulted in a sustained finding with the appropriate sanction. No action by us 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:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

During this reporting period, one CRM case included both a criminal and an administrative investigation. We concurred with PSB's decision that a criminal investigation was appropriate in this case. We did not identify any other case where we believe a criminal investigation should have been initiated, and no action on our part 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.*

**Phase 1:** Not in compliance

- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** In compliance

Of the total five sustained CRM cases since the issuance of the Second Order, one resulted in minor discipline. We concurred with MCSO's decision in this case, and the employee did not file a grievance. In the remaining four sustained cases, the deputy was either deceased or was dismissed from employment. The employee who was dismissed from the agency did not file an appeal.

**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:** Not in compliance

During this and the last reporting period, we and PSB concurred on the investigative outcome of each CRM investigation completed.

PSB, now responsible for the investigation of all CRM cases, has continued to appropriately identify cases that could be, or are, CRMs. PSB personnel are professional in our contacts with them and responsive to any concerns or questions we have brought forward; and they provide detailed information and updates in their weekly briefings. Their written reports are thoroughly prepared; and in all cases, their written reports have been consistent with the information provided during the weekly case briefings. We continue to note PSB's sincere efforts to conduct quality investigations and prepare thorough and well-documented reports.

However, PSB is still not yet fully compliant with all the required components of internal investigation reporting. Most of these omissions are requirements to include specific information in each written report. The number of omissions has decreased significantly over the past two reporting periods. We continue to reinforce to PSB the necessity to ensure that written reports are completed properly. PSB is now near full compliance in its investigations and reporting on CRM matters, and we are confident that PSB will address the missing elements we have identified.

***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 in compliance

- CP-2 (Code of Conduct), most recently amended on January 6, 2017.
- CP-3 (Workplace Professionalism), most recently amended on December 15, 2016.
- CP-5 (Truthfulness), most recently amended on December 21, 2016.
- CP-11 (Anti-Retaliation), most recently amended on December 1, 2016.
- GH-2 (Internal Investigations), under revision at the close of the reporting period.
- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.
- GC-17 (Employee Disciplinary Procedure), currently under revision.
- Compliance Division Operations Manual, currently under revision.
- Professional Standards Bureau Operations Manual, currently under revision.

**Phase 2:** Not in compliance

During the last reporting period, we reviewed 145 internal investigations conducted by MCSO. Six of these were criminal misconduct investigations and 139 were administrative misconduct investigations. Of the 139 administrative investigations, 119 were completed after July 20, 2016, but many were initiated prior to the Second Order. We found 26 (22%) of the completed 119 investigations to be in full compliance with the Second Order. We also reviewed five CRM cases, all completed after July 20, 2016. One of these five cases was in full compliance with the Second Order. In the remaining cases, we found single or multiple concerns that prevented full compliance with the Second Order.

During this reporting period, we reviewed 134 internal investigations. Seven of these were criminal misconduct investigations, and 127 were administrative investigations. All seven criminal investigations were in compliance with the Second Order. Of the 127 administrative misconduct investigations that we reviewed, four were CRM cases. All but 25 of the total administrative investigations were both initiated and completed after the issuance of the Second Order. We found MCSO to be in compliance with all requirements of the Second Order in 67 (53%) of the 127 administrative misconduct cases reviewed.

In the 58 (47%) cases that were not in full compliance, we noted continuing concerns with failure to complete thorough investigations, unsupported findings, and inconsistent discipline. In many of the cases, compliance was not reached because of the failure to complete the investigation within the required timelines; failure to attempt in person interviews with complainants; or failure to audio and video tape all interviews unless there was an articulated reason this could not occur. We noted greater improved compliance in the investigations that were conducted by sworn personnel in PSB rather than those conducted by Detention personnel assigned to PSB. PSB is aware of this disparity, and has implemented a number of new processes to address the concern. We also note a continued low compliance rate in investigations conducted by personnel outside of PSB.

MCSO still falls short of the compliance requirements for the completion of internal investigations, but MCSO's compliance improved from 21% during the last reporting period to 53% this reporting period. While we still have concerns with some investigations, MCSO's increased compliance during this reporting period is noteworthy. We specifically note the many compliant investigations conducted by PSB sworn staff, the efforts PSB has made to increase compliance in the investigations by Detention personnel assigned to PSB, and the review and corrective memoranda provided by PSB on investigations completed outside of PSB as reasons for this increased overall compliance.

We will discuss both the increased compliance we have observed and the remaining concerns with PSB and District and Division personnel during our next site visit and provide them with specific case examples.

**Paragraph 290.** *This requirement is necessitated by the Court's Findings of Fact that show that the MCSO manipulates internal affairs investigations other than those that have a direct relation to the Plaintiff class. The Court will not return the final authority to the Sheriff to investigate matters pertaining to members of the Plaintiff class until it has assurance that the MCSO uniformly investigates misconduct and applies appropriate, uniform, and fair discipline at all levels of command, whether or not the alleged misconduct directly relates to members of the Plaintiff Class.*

**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 here.

During the last reporting period, we reviewed a total of 145 misconduct investigations conducted by MCSO. Of those cases, 134 were internal administrative investigations, five were internal administrative CRM cases, and six were internal criminal investigations. All six of the criminal investigations, and 119 of the administrative investigations, were completed after July 20, 2016. Only 25 of the administrative cases were in full compliance.

For this reporting period, we reviewed a total of 127 administrative misconduct investigations, including four that were classified as CRMs, and seven criminal misconduct investigations conducted by MCSO personnel. All were completed after the issuance of the Second Order.

We found 67 (53%) of the administrative misconduct investigations conducted to be in full compliance with both Orders, an improvement of 32% from the last reporting period where MCSO's compliance was only 21%. The investigations conducted by PSB had the highest compliance rate. In the 60 administrative cases that were not in full compliance, we continued to observe many of the same concerns as in the last two reporting periods. We found that all seven of the internal criminal misconduct investigations met the requirements of the Paragraphs related to criminal investigations.

During the reporting period covering July-December 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. All of these cases were outsourced due to the involvement of the Chief Deputy, or other conflicts of interest identified by MCSO, and include the investigations identified in Paragraph 300. MCSO has since processed a Request for Proposal and retained an outside investigator who meets the requirements of Paragraphs 167.iii. and 196 to conduct the investigations it has 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 appears to exist.

During the last reporting period, PSB provided us with a document PSB received from 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 within 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.

In January 2017, we requested that PSB provide us with a list that included the status of all cases that had been outsourced to any contract vendor, other law enforcement agency, or other person or entity, so that we could continue to monitor these investigations and ensure that the cases identified in the Findings of Fact are properly and thoroughly investigated. PSB has since provided this list.

During this reporting period, PSB advised us that the cases that were outsourced to the outside vendor and those that were assigned to the Independent Investigator by the Court remain in progress.

***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.*

**Phase 1:** Not applicable

**Phase 2:** In compliance

While MCSO has not yet finalized policies involving internal investigation processes, during this reporting period, PSB personnel continued to inform us of ongoing criminal and administrative misconduct investigations. A Monitoring Team member attends each weekly CRM meeting, reviews the lists of new internal investigations, and has access to the PSB 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.

*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 more than three years ago, we have reviewed hundreds of investigations into alleged misconduct by MCSO personnel. As noted in our previous reports and elsewhere in this report, we continue to note concerns with internal investigations but have also noted continuing improvements. For this reporting period, MCSO increased its overall compliance with the requirements related to the completion of internal investigations from 21% to 53%. Those investigations completed by sworn supervisors assigned to PSB had the highest percentage of compliance (77%). In most cases, the investigations conducted by sworn personnel that were not compliant lacked some of the required reporting requirements.

Investigations completed by Detention personnel were compliant with all the requirements of the Order in 66% of the investigations. Many of the investigations that were not compliant were also a result of the lack of required reporting requirements. In some cases, we found concerns with a lack of thoroughness and the failure to employ appropriate investigative techniques. We brought this information to the attention of the PSB Commander, and PSB is developing a number of strategies to improve these investigations.

Of the cases investigated outside of PSB, only 32% were compliant with all the requirements of the Order. These cases continue to be of concern due to the lack of significant improvement. Most of these cases were investigated at the District level. In many of these cases, non-compliance is a result of procedural errors, or failure to meet established timelines, but we also continue to observe ongoing concerns with the quality of the investigations. While we acknowledge that the investigative training has not yet taken place, we have met with District command personnel during the last three site visits to share our concerns with the investigations conducted by their personnel, and reviewed and approved by them. We have specifically addressed areas where continuous compliance issues have existed. Were it not for the corrections and additional investigation directed by PSB when they review these investigations, even fewer of these cases would be in compliance. We still have not observed any intervention or accountability strategies employed by MCSO executive staff to address these concerns.

During our last three site visits, we met with PSB and then with District and Division command personnel to provide them with information on cases we have found to be deficient in quality or compliance with the written report requirements. We provided them with extensive feedback regarding our concerns and recommendations for improvement, including numerous specific case examples. We also acknowledged that those investigations that have been properly – and in some cases, exceptionally well – investigated and reported.

PSB personnel continue to be receptive to our input, and we have had many productive meetings and discussions regarding the investigations they have conducted. We noted in our reviews of cases after our site visits that PSB is addressing concerns we have brought forward. We have observed continuing and significant improvement in the investigations conducted by PSB over the last 18 months.

Unlike the improvements we have observed with PSB investigations, we have not observed substantial improvement in District investigations. While we remain hopeful that training will address some of the non-compliance areas we have noted, we do not believe that training alone will serve as the panacea that will address all the problems we have observed with these investigations. Commitment and effort by those responsible for completing and reviewing investigations will also be required. MCSO executive staff must also identify additional strategies that will address the personnel who continue to fail to properly conduct and review internal investigations.

In our quarterly status reports and during our site visits, 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. The leadership of the organization must provide proper oversight, and ensure that there are consequences for those who fail to comply with the requirements of the Orders.

We remain encouraged by the attendance of MCSO leadership personnel at many of our meetings during both our January and April 2017 site visits where internal investigations were discussed. It remains critical to the success of the agency that MCSO's leadership understands the challenges faced by PSB personnel and others charged with the responsibility to conduct internal investigations. Leadership personnel must provide appropriate oversight, necessary resources, and support for their personnel; and they must begin to hold those who conduct internal investigations accountable for the quality of their investigations, if MCSO is to achieve compliance with the requirements set forth by the Court.

**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

We wrote in our last two quarterly status reports that PSB had identified a number of investigations associated with this Paragraph. However, concerning Paragraph 300 (d.), in the Findings of Fact of May 13, 2016, the Court specifically draws attention to additional uninvestigated acts of misconduct that MCSO has not yet identified. Acts of misconduct involving the Chief Deputy and a captain are pointedly outlined in the Findings of Fact. Prior to our October site visit, we identified all acts of misconduct that are known to us and which fall within the criteria of Paragraph 300(a-d). The acts of misconduct that we identified in the Findings of Fact were presented to the PSB Commander. During the last reporting period, and specifically 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 independent investigator for investigative purposes.

During the last reporting period, the PSB Commander 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.). PSB has not found it necessary to contract with any additional licensed private investigators.

During our April 2017 site visit, we met with PSB command staff and MCAO to confirm that all of the acts of misconduct that were identified in the Findings of Fact (FOF) are being investigated, either by the Court appointed Independent Investigator or the private licensed contract investigator. Previous to this meeting, PSB command had 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 previously agreed upon. The MCAO and PSB command explained that many of the acts of potential misconduct identified in the FOF were identified by the Court in Paragraph 301 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. It is our contention that all acts of potential misconduct that were identified by the Court in the FOF be investigated, and that any of the potential misconduct outlined by the Court in Paragraph 301 that the Independent Investigator does not investigate should be investigated by MCSO and/or the contract investigator. However, MCAO and PSB command explained that MCSO is not aware – with any degree of specificity – what investigations the Independent Investigator has determined to initiate from Paragraph 301. The same holds true for us. Thus, the ability for us to confirm that all potential misconduct outlined in the FOF will be investigated by PSB, the PSB contract investigator, or the Independent Investigator remains pending until it can be concluded what the Independent Investigator is (or upon completion, did) determine to investigate. Once this information is established, we expect that all identified acts of misconduct in the FOF, to include those in Paragraph 301 that the Independent Investigator determined to not investigate, will be investigated by PSB and/or its contract investigator. Finally, the PSB Commander and the MCAO advised us that the acts of misconduct involving (former) Sheriff Arpaio as identified in the FOF will not be investigated by any entity. They have explained that this is because 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.*

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

- GC-16 (Employee Grievance Procedures), most recently amended on January 6, 2017.

### **Phase 2: Deferred**

Our review of the monthly submissions for this reporting period reflects that MCSO had no activity to report relevant to this Paragraph.

## Section 18: Concluding Remarks

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We assess compliance with 89 Paragraphs of the First Order, and 123 Paragraphs of the Second Order, for a total of 212 Paragraphs. MCSO is in Phase 1 compliance with 59 of the First Order Paragraphs, or 79%; and 13 of the Second Order Paragraphs, or 12%. MCSO is in Phase 2, or operational compliance, with 50 of the First Order Paragraphs, or 57%; and 68 of the Second Order Paragraphs, or 60%. Combining the requirements of both Orders, MCSO is in Phase 1 compliance with 72 Paragraphs, or 40%; and in Phase 2 compliance with 118 Paragraphs, or 58%.

As noted in our last report, Sheriff Penzone and his management team have stated that strong community relations are a priority of his administration, and several of those added to his staff have solid backgrounds in this area. The Sheriff, via MCAO, has been working with the Parties to amend the First Order and reclaim the community engagement requirements eschewed by his predecessor and subsequently delegated to the Monitor. We support these efforts. MCSO produced a plan to address the organizational bias identified in the first and second annual traffic stop analyses.<sup>3</sup> The plan is heavily focused on community outreach, and we recognize the value of these efforts as *one component* of the plan. However, we and the Parties – and countless Maricopa County residents who have expressed their concerns at community meetings since the beginning of our tenure – believe that MCSO also needs to adopt more of an *inward* focus on the members of the Office and its internal systems. To regain trust with community members and rebuild the agency into one that is viewed as fair and just, MCSO must first acknowledge the painful history of the agency’s actions against members of the Plaintiffs’ class. Just last week, at a status conference of the Parties, the Court noted that such past actions “can create an institutional environment that must be changed.”

By its very nature, the monitoring process necessitates that we examine the requirements of the Orders and make a determination on each as to MCSO’s compliance, resulting in numerical and percentage assessments. These assessments, however, do not always tell the full story. This report covers the first quarter under the new administration. The Sheriff and his team say that they aspire to the agency’s further progress with compliance. While we note an increase in attention to the reform process and a willingness to work with the Parties and the Monitoring Team on the part of the Sheriff and his team, there remains considerable work to be done. Though there is reason to be optimistic about the commitment of this new administration, the Sheriff and his staff need to be mindful that the process at hand is slowly becoming an assessment of what is being accomplished under his watch and less that of his predecessor. Though mindful of the legacy issues that were problematic to both the agency and the community, our attention will be more focused on current efforts and successes.

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<sup>3</sup> While this report documents data issues that call into question some of the analytical conclusions associated with traffic stop data, neither MCSO nor its contractor disputes the general conclusions that some measure of systemic bias exists across the organization in its enforcement of traffic laws.

## Appendix: Acronyms

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The following is a listing of acronyms frequently used in our reports:

ACLU	American Civil Liberties Union
ASU	Arizona State University
ATU	Anti-Trafficking Unit
BIO	Bureau of Internal Oversight
CAB	Community Advisory Board
CAD	Computer Aided Dispatch
CID	Court Implementation Division
CEU	Criminal Employment Unit
CRM	Class Remedial Matter
DOJ	Department of Justice
EIS	Early Identification System
EIU	Early Identification Unit
EPA	Employee Performance Appraisal
FTO	Field Training Officer
IIU	Internal Investigations Unit
IR	Incident Report
LOS	Length of stop
LLS	Legal Liaison Section
MCAO	Maricopa County Attorney's Office
MCSO	Maricopa County Sheriff's Office
NOI	Notice of Investigation
PAL	Patrol Activity Log
PDH	Pre-Determination Hearing
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
VSCF	Vehicle Stop Contact Form