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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

MANUEL de JESUS ORTEGA
MELENDRES, et al.,

Plaintiffs,

vs.

JOSEPH M. ARPAIO, et al.

Defendants.

No. CV 07-02513-PHX-MHM

**UNITED STATES' AMICUS
CURIAE BRIEF REGARDING
DEFENDANT MARICOPA
COUNTY'S MOTION TO
STAY PROCEEDINGS**

**UNITED STATES' AMICUS CURIAE BRIEF REGARDING
DEFENDANT MARICOPA COUNTY'S MOTION TO STAY PROCEEDINGS**

On May 28, 2009, Defendant Maricopa County filed a Motion to Stay Proceedings in the above-captioned case. In its Motion, Defendant Maricopa County states that it is seeking a temporary stay of proceedings pending the outcome of the United States' investigation of the Maricopa County Sheriff's Office. The United States hereby submits the following:

1. The Civil Rights Division includes ten program-related sections, including the Special Litigation Section.
2. Among other things, the Special Litigation Section enforces the police misconduct provision of the Violent Crime Control and Law Enforcement Act of

1 1994,

2 42 U.S.C. § 14141, which authorizes the Attorney General to seek equitable and
3 declaratory relief to redress a pattern or practice of conduct by law enforcement
4 agencies that violates federal law; and the Omnibus Crime Control and Safe
5 Streets Act of 1968, 42 U.S.C. § 3789d, which authorizes the Attorney General to
6 initiate civil litigation to remedy a pattern or practice of discrimination based on
7 race, color, national origin, gender or religion involving services by law
8 enforcement agencies receiving federal financial assistance.

- 9 3. On March 10, 2009, the United States notified the Maricopa County Sheriff's
10 Office and Sheriff Joe Arpaio that the United States Department of Justice,
11 through the Special Litigation Section, is commencing an investigation of the
12 Maricopa County Sheriff's Office. The investigation focuses on alleged patterns
13 or practices of discriminatory police practices and unconstitutional searches and
14 seizures, as well as national origin discrimination, in accordance with other
15 federal statutes, by the MCSO.
- 16 4. On May 28, 2009, Defendant's attorneys for Maricopa County in Melendres, et al.
17 v. Arpaio, et al., 2:07-cv-02513-MHM, filed a Motion to Stay Proceedings
18 pending the outcome of the United States Department of Justice's investigation of
19 the Maricopa County Sheriff's Office.

- 20 5. The United States does not believe a stay is necessary for the following reasons:¹
21 a. Private plaintiffs and the United States may conduct litigation and
22 investigations, respectively, on parallel tracks.² The Melendres action was
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24 ¹ This brief is not an endorsement of the merits of either party's case or defense. It is
25 submitted solely to alert the Court to aspects of the Department of Justice's investigation not
disclosed by the Defendant, and about which the Court may not be aware.

26 ² 42 U.S.C. § 1983 was enacted on April 20, 1871, as part of the Civil Rights Act of
27 1871 and predates either 42 U.S.C. § 14141, enacted in 1994, or 42 U.S.C. § 3789d, enacted in

1 filed in December 2007 and discovery has been ongoing over the last year
2 and a half. In contrast, the United States' investigation only began in
3 March 2009. The Department of Justice lacks subpoena power to conduct
4 its investigations under the statutes cited in Paragraph 2. We, therefore,
5 must seek the cooperation of the jurisdiction under investigation.³ We are
6 awaiting Marciopa County Sheriff's Office's decision regarding whether it
7 will fully cooperate with our investigation. Accordingly, it is premature
8 and impossible to predict the timeline or the outcome of our investigation.

9 b. The United States' and the Melendres private plaintiffs' causes of action
10 are distinct. The Attorney General for the United States has exclusive
11 authority to bring an action under either of the statutes outlined in
12 Paragraph 2. The United States cannot represent individual complainants
13 in the actions outlined in Paragraph 2. Moreover, the private plaintiffs do
14 not have standing, as of right, to intervene in the United States'
15 investigation or cause of action, should a cause of action be filed in
16 accordance with the statutes outlined in Paragraph 2. Accordingly, the
17 United States does not intend, through the conduct of its investigation, to
18 delay, interfere with, or limit a private plaintiff's rights or abilities to seek
19 timely redress in a private cause of action.
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24 1968. Neither of these latter statutes modified or limited a private individual's rights under
25 42 U.S.C. § 1983.

26 ³ Notably, however, our investigation will proceed with or without this jurisdiction's
27 cooperation.
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1 For the foregoing reasons, the United States does not believe a stay is necessary.

2 Respectfully submitted,

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4 LORETTA KING,
5 Acting Assistant Attorney General
6 Civil Rights Division

7 SHANETTA Y. CUTLAR, Chief
8 DANIEL H. WEISS, Deputy Chief

9 /s/ Je Yon Jung
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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2009, I electronically transmitted the UNITED STATES' AMICUS CURIAE BRIEF REGARDING DEFENDANT MARICOPA COUNTY'S MOTION TO STAY PROCEEDINGS to the Clerk's Office using the CM/ECF System for filing and transmitted a Notice of Electronic Filing to the following attorneys who are CM/ECF registrants:

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By: _s/Je Yon Jung_____