

John T. Masterson, Bar #007447  
Joseph J. Popolizio, Bar #017434  
Diana J. Elston, Bar #025461  
Justin M. Ackerman, Bar #030726  
JONES, SKELTON & HOCHULI, P.L.C.  
2901 North Central Avenue, Suite 800  
Phoenix, Arizona 85012  
Telephone: (602) 263-1700  
Fax: (602) 200-7846  
jmasterson@jshfirm.com  
jpopolizio@jshfirm.com  
delston@jshfirm.com  
jackerman@jshfirm.com

A. Melvin McDonald, Bar #002298  
JONES, SKELTON & HOCHULI, P.L.C.  
2901 North Central Avenue, Suite 800  
Phoenix, Arizona 85012  
Telephone: (602) 263-1700  
Fax: (602) 200-7847  
mmcdonald@jshfirm.com

and

Michele M. Iafrate, Bar #015115  
Iafrate & Associates  
649 North Second Avenue  
Phoenix, Arizona 85003  
Tel: 602-234-9775  
miafrate@iafratelaw.com

Attorneys for Defendant Joseph M. Arpaio in  
his official capacity as Sheriff of Maricopa  
County, AZ

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF ARIZONA**

Manuel de Jesus Ortega Melendres, et al.,  
  
Plaintiff,  
  
v.  
  
Joseph M. Arpaio, et al.,  
  
Defendant.

NO. CV 07-02513-PHX-GMS

**REPLY IN SUPPORT OF MOTION  
FOR RECUSAL OR  
DISQUALIFICATION OF JUDGE  
G. MURRAY SNOW**

1 **I. THE THREE CIVIL CONTEMPT ISSUES TO BE LITIGATED DURING**  
 2 **THE APRIL 2015 OSC HEARING DID NOT INCLUDE THE**  
 3 **GRISSOM/MONTGOMERY INVESTIGATIONS.**

4 Plaintiffs' Response in Opposition to Sheriff Arpaio and Chief Deputy  
 5 Sheridan's Motion for Recusal or Disqualification of the Court ("Response") incorrectly  
 6 argues that the Grissom and Montgomery investigations are somehow related to the three  
 7 clearly defined areas of the Order to Show Cause ("OSC") Order. [Doc. 880]. The record  
 8 is uncontested that Judge Snow ordered only *three* issues to be determined during the  
 9 April 2015 OSC hearing. These were whether Sheriff Arpaio, Chief Deputy Gerard  
 10 Sheridan, and other MCSO leadership acted in contempt of this Court's "lawful writs,  
 11 processes, orders, rules, decrees, or commands" by: "(1) failing to implement and comply  
 12 with the preliminary injunction; (2) violating their discovery obligations; and (3) acting in  
 13 derogation of this Court's May 14, 2014 Orders." [Doc. 880 at 26]. Inquiry into whether  
 14 Judge Snow's wife allegedly stated that Judge Snow hated Defendant Arpaio and would  
 15 do everything in his power to remove him from office (Grissom Investigation) or that,  
 16 among other things, whether federal agents had hacked into bank accounts of Arizonans  
 17 without lawful authority (Montgomery Investigation), have nothing to do with any of the  
 18 three clearly defined OSC hearing subjects. Plaintiffs have not attempted to argue  
 19 otherwise, and to do so would be disingenuous.

20 Rather, Plaintiffs argue that the Grissom/Montgomery investigations related  
 21 to one or more of the three defined OSC subjects because they relate to the remedies the  
 22 Court should impose from the OSC hearing. [Response at 11:1-7]. The  
 23 Grissom/Montgomery investigations have nothing to do with whether MCSO: (1) failed to  
 24 implement and comply with the preliminary injunction; (2) violated their discovery  
 25 obligations; or (3) acted in derogation of the May 14, 2014 Order, and thereby cannot  
 26 relate to any remedy this Court should impose. Moreover, Plaintiffs' attempt to argue that  
 27 Defendants were somehow put on notice that the Court would suddenly inquire about the  
 28 Grissom/Montgomery investigations based on the Court's admonition that it would

1 broadly review evidence in the OSC hearing stretches the bounds of reality.<sup>1</sup> Finally,  
 2 while Plaintiffs are correct to note that a court may examine witnesses and comment on  
 3 evidence [Response at 7-8], such inquiry is improper when it involves matters entirely  
 4 *unrelated* to the current proceeding and *directly* implicates the court's reputation. *United*  
 5 *States v. Wilson*, 16 F.3d 1027, 1031 (9th Cir. 1994) (new trial necessary when judicial  
 6 remarks and questioning of witnesses projected the "appearance of advocacy or  
 7 partiality."); [Rotunda at ¶¶ 20-24, Ex. 10; Rotunda Supp. at ¶¶ 6-7, 11, 16, attached as  
 8 Ex. 1]. Simply put, the Grissom/Montgomery matters were not relevant to the OSC  
 9 hearing until the Court made them so through its own inquiry.<sup>2</sup>

10 Finally, Plaintiffs argue that the Court had an independent basis to inquire  
 11 about the Montgomery investigation because it had continued up to the date of the OSC  
 12 hearing. This argument is belied by the record and Plaintiffs' own exhibits. First, even  
 13 Plaintiffs acknowledge that both Arpaio and Sheridan testified that the Montgomery  
 14 investigation stopped long before the April 2015 OSC hearing after they deemed  
 15 Montgomery to not be credible. [See Response at 12:3-6]. Moreover, Plaintiffs' own  
 16 exhibits demonstrate that while MCSO recently communicated with Montgomery, it never  
 17 directed an investigation of Judge Snow or relied upon Montgomery's purported  
 18 accusations about Judge Snow. [Wang. Decl., Ex. C, D, E].

---

19  
 20 <sup>1</sup> Plaintiffs' reference to the March 20, 2015 and April 21, 2015 hearing transcripts  
 21 do not demonstrate in any way that the Court alerted Defendants that it would inquire into  
 22 the Grissom/Montgomery investigations. [See Response at 3:19-25; 11:1-7].

23 <sup>2</sup> Plaintiffs also argue that the Court was permitted to expand its civil (and potential  
 24 criminal) contempt inquiry into other areas *just prior* to the civil contempt proceeding on  
 25 April 21, 2015. [Response at 3:19-25]. However, this argument runs afoul of a civil  
 26 contemnor's right to notice and an opportunity to be heard. *Int'l Union, United Mine*  
 27 *Workers of America v. Bagwell*, 512 U.S. 821, 827, 833-34 (1994) (the law requires  
 28 progressively greater protections for contempts of complex injunctions that necessitate  
 more elaborate and in-depth fact-finding); *Stuart v. United States*, 813 F.2d 243, 251 (9th  
 Cir. 1987) *rev'd on other grounds* 489 U.S. 363 (1989) (notice includes prior  
 identification of areas of examination); *Taylor v. Hayes*, 418 U.S. 488, 498 (1974) (*in*  
*contempt proceedings, procedural protections such as prior notice are crucial "in view*  
*of the heightened potential for abuse posed by the contempt power."*) (emphasis added).  
 Defendants also argued that Judge Snow's surprise inquiry into matters unrelated to the  
 OSC hearing demonstrates the perception of bias *because* he willingly violated their Due  
 Process rights, not that the violations themselves are grounds for recusal. *See infra* § IV.

1 **II. BOTH JUDGE SNOW AND HIS SPOUSE HAVE AN UNWAIVABLE,**  
 2 **DISQUALIFYING INTEREST UNDER § 455(b)(5)(iii) & (iv).**

3 Plaintiffs' Response avoids a simple and undeniable truth. By his own  
 4 inquiry, statements, and questions in open court on the record, Judge Snow unexpectedly  
 5 inquired about matters that directly injected into the proceeding the credibility and  
 6 reputation of both himself and that of his family and made both himself and his spouse a  
 7 material witness.<sup>3</sup> Even Plaintiffs' own expert recognized that Judge Snow must recuse  
 8 himself if the allegations underlying the Grissom investigation were true. [Doc. 1150-2 at  
 9 ¶ 14]. No reasonable person with knowledge of the facts can deny that Judge Snow is  
 10 now investigating and presiding over issues involving his own family, which is expressly  
 11 forbidden by 28 U.S.C. § 455(b)(5). *See United States v. Alabama*, 828 F.2d 1532, 1545  
 12 (11th Cir. 1987) (disqualification required when the judge was "forced to make factual  
 13 findings about events in which he was an active participant.").

14 Plaintiffs' attempt to argue that the Court did not run afoul of 28 U.S.C. §  
 15 455(b) because Sheriff Arpaio and Chief Deputy Sheridan testified that the Montgomery  
 16 investigation was not credible and that Timothy Casey found the Grissom investigation  
 17 was not reliable.<sup>4</sup> [Response at 12-13]. Notwithstanding the fact that these  
 18 determinations predated Judge Snow's conduct during the April 2015 OSC hearing, the  
 19 **credibility** of these statements is not what is at issue under § 455(b) and Defendants'  
 20 Motion. Defendants' Motion presented **uncontroverted** statements from credible  
 21 witnesses that Judge Snow is biased against Defendant Arpaio. Irrespective of the validity  
 22 of these opinions, the uncontradicted statements squarely make Judge Snow and his wife  
 23 material witnesses in this action. Even if at some point there is a denial that Mrs. Snow

24 \_\_\_\_\_  
 25 <sup>3</sup> Plaintiffs' assertion that Ms. Iafrate initiated this questioning is entirely incorrect.  
 26 It was only after the Court began its inquiry into these matters that she elicited further  
 27 testimony to clarify the Court's comments.

28 <sup>4</sup> Plaintiffs are incorrect regarding the Grissom Investigation. The investigation  
 into the comments allegedly made by Judge Snow's spouse determined that the Grissoms  
 were credible witnesses, but out of an abundance of caution and respect for the Court,  
 Defendant Arpaio and MCSO did not further pursue the investigation at that time.

made the statements alleged by the Grissoms, the conflict that is created is unwaivable under § 455(b). [Rotunda Supp. at ¶ 7]. Accordingly, because sufficient facts support Defendant Arpaio's allegation that Judge Snow and his wife are material witnesses in this proceeding, recusal is mandatory under § 455(b). *See Preston*, 923 F.2d at 734 (9th Cir. 1991) (holding that recusal is appropriate under 455(b) even absent actual bias); *U.S. v. Scrushy*, 721 F.3d 1288, 1303 (11th Cir. 2013) (holding that "partiality is conclusively presumed, making recusal mandatory" where the judge or his spouse are "likely to be a material witness in the proceeding" under 28 U.S.C. § 455(b)(5)(iv)).<sup>5</sup>

Finally, Plaintiffs incorrectly argue that Mrs. Snow's alleged statement to Mrs. Grissom is not admissible evidence and therefore cannot support a recusal motion. The standard for recusal under § 455 is not tethered to the Federal Rules of Evidence.<sup>6</sup> *See e.g., Matter of Searches Conducted on March 5, 1980*, 497 F.Supp. 1283 (E.D. Wis. 1980) (all that is necessary for a recusal motion is some kind of probative evidence). While Defendants acknowledge that a recusal motion must, of course, rest on a factual basis, the test is whether "facts have been presented that, assuming their truth, would lead a reasonable person to reasonably infer that bias or prejudice existed, thereby foreclosing impartiality of judgment." *U.S. v. Corr*, 434 F. Supp. 408 (S.D.N.Y. 1977). Because Defendant Arpaio has presented uncontroverted evidence demonstrating that Judge Snow and his spouse are material witnesses in this case, recusal of Judge Snow is mandatory.<sup>7</sup>

---

<sup>5</sup> It is axiomatic that just because the Court has an independent obligation under § 455 to recuse itself, and has not done so, does not mean that recusal is still not appropriate. If Plaintiffs argument is taken to its logical conclusion, there would be no need for parties to ever file recusal motions under 28 U.S.C. §§ 144, 455.

<sup>6</sup> Regardless, Mrs. Snow's statements are admissible as a statement against interest under FRE 804(b)(3). *See also* FRE 605 ("The presiding judge may not testify as a witness."); *Cheeves v. Southern Clays Inc.* 797 F.Supp. 1570, 1582 (M.D. Ga. 1992) (federal judge is rendered incompetent as a witness concerning his or her own disqualification). At the very least, the statements would be admissible during a future evidentiary hearing or lead to discoverable evidence. [Rotunda Supp. at ¶¶ 6-8].

<sup>7</sup> Plaintiffs also incorrectly argue that the failure to object during Judge Snow's inquiry into these matters at the April 2015 OSC hearing is somehow a waiver of Defendants' right to bring a recusal motion under § 455. Nothing under § 455 requires a timely objection during the hearing giving rise to the grounds for recusal. [Rotunda Supp. at ¶ 10 ("Judges should not be able to pressure a waiver of disqualification by figuratively

### III. JUDGE SNOW ALSO HAS AN UNWAIVABLE DISQUALIFYING INTEREST UNDER § 455(b)(1).

Relying primarily on *Liteky v. United States*, 510 U.S. 540 (1994), Plaintiffs repeatedly argue that a motion to disqualify based on the Court’s actions and statements is insufficient to constitute a valid basis for bias or partiality. Plaintiffs fail to acknowledge, however, that *Liteky* recognized that judicial rulings and comments do provide a basis for recusal under § 455 and a recusal motion is not ***required*** to be grounded in an extrajudicial source. *Liteky*, 510 U.S. at 551 (holding that an extrajudicial source is a “***common*** basis [for disqualification] but not the ***exclusive*** one.”) (emphasis added); *id.* at 541 (judicial rulings “***almost*** never constitute a valid basis for a bias or partiality motion.”) (emphasis added); *id.* at 555 (“[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings” “constitute a basis for a bias or partiality motion” if “they display a deep-seated favoritism or antagonism that would make fair judgment impossible.”). Moreover, the *Liteky* Court explicitly referred to two different scenarios when remarks made during judicial proceedings constitute disqualification: (1) when remarks reveal an extrajudicial bias and (2) when the remarks reveal an excessive bias arising from information acquired during judicial proceedings. *Id.* at 555.

Judge Snow’s actions in the April 2014 OSC hearing lend credence to the reasonable perception of bias by placing his reputation and credibility directly at issue and making both his wife and himself material witnesses to the proceeding. *See United States v. Microsoft Corp.*, 253 F.3d 34, 115 (D.C. Cir. 2001) (recognizing the difference between statements made from the bench and those same comments made off the bench, while the matter is pending); *United States v. Cooley*, 1 F.3d 985 (10th Cir. 1993) (reversing refusal to disqualify where trial judge made comments outside the courtroom alleging that defendants “are breaking the law.”). Moreover, a reasonable observer would believe that

cloaking the judge's iron fist in a velvet glove.”)]. Moreover, as Plaintiffs’ expert has previously opined, the conflict created by Judge Snow’s brother-in-law is unwaivable. [Rotunda Supp. at ¶¶ 10, 12]; Advisory Opinion No. 58 (1978).



1 Judge Snow's questioning and investigation into unrelated issues as part of the OSC  
 2 hearing patently demonstrates a perception of "deep-seated favoritism or antagonism" or  
 3 "extra-judicial bias" that makes fair judgment impossible. [Rotunda at ¶¶ 19-25; Rotunda  
 4 Supp. at ¶ 16]. Judge Snow's statements and conduct in this action therefore resemble  
 5 both of the scenarios contemplated by the *Liteky* court requiring recusal; or at the very  
 6 least rise to the level of an **appearance** of bias and partiality sufficient to justify his  
 7 recusal from this action under § 455(b)(1). *See Hook v. McDade*, 89 F.3d 350, 355 (7th  
 8 Cir. 1996) ("In determining whether a judge must disqualify himself under 28 U.S.C. §  
 9 455(b)(1), "the question is whether a reasonable person would be convinced the judge was  
 10 biased."); *United States v. Sibla*, 624 F.2d 864, 867 (9th Cir. 1980) (The same standard  
 11 will be applied to both § 455(a) and (b).).<sup>8</sup>

12 Finally, Plaintiffs fail to recognize that an underlying basis for Defendants'  
 13 Motion stems from extrajudicial sources – i.e., Mr. and Mrs. Grissom's statements and  
 14 Dennis Montgomery.<sup>9</sup> Accordingly, Defendants' Motion is not merely based on the  
 15 Court's actions and statements during the proceedings, but largely premised on Judge  
 16 Snow injecting the Grissom/Montgomery investigations into the proceeding. Because  
 17 these two investigations directly implicate the court's credibility and reputation and make  
 18 Judge Snow and his spouse material witnesses to the proceedings, they alone provide  
 19 sufficient grounds for recusal, and do not run afoul of the concerns expressed by the court  
 20 in *Liteky*.

---

23  
 24 <sup>8</sup> Judge Snow's conduct also falls outside the seven traditionally identified judicial  
 25 actions the Ninth Circuit has enumerated "which will not ordinarily require recusal under  
 26 § 455." *United States v. Holland*, 519 F.3d 909, 914 n.5 (9th Cir. 2008). Moreover,  
 contrary to Plaintiffs' arguments, Defendant Arpaio has not argued in his Motion that  
 Judge Snow had expressed "impatien[ce], dissatisfaction, annoyance, and even anger"  
 sufficient to justify his recusal. *Liteky*, 510 U.S. at 555-56.

27 <sup>9</sup> *See United States v. Johnson*, 610 F.3d 1138, 1147 (9th Cir. 2010) (describing an  
 28 extrajudicial source as "something other than rulings, opinions formed or statements made  
 by the judge during the course of trial.").

1 **IV. RECUSAL IS REQUIRED UNDER § 455(a) BECAUSE A REASONABLE**  
 2 **OBSERVER WITH FULL KNOWLEDGE OF THE RECORD WOULD**  
 3 **CONCLUDE THERE IS AN APPEARANCE OF BIAS.**

4 The relevant test for recusal under § 455(a) is whether “a reasonable person  
 5 would have a reasonable basis for questioning the judge’s impartiality, not whether the  
 6 judge is in fact impartial.” *Preston v. United States*, 923 F.2d 731, 734 (9th Cir. 1991).  
 7 Other circuits have clarified that this independent outside observer is “less inclined to  
 8 credit judges’ impartiality and mental discipline than the judiciary....” *In re Mason*, 916  
 9 F.2d 384, 386 (7th Cir. 1990); *United States v. DeTemple*, 162 F.3d 279, 286 (4th Cir.  
 10 1998); *In re Faulkner*, 856 F.2d 716, 721 (5th Cir. 1998) (“[p]eople who have not served  
 11 on the bench are often all too willing to indulge suspicions and doubts concerning the  
 12 integrity of judges.”). The Ninth Circuit has also instructed that when a case is close, the  
 13 balance should tip in favor of recusal. *United States v. Holland*, 519 F.3d 909, 911 (9th  
 14 Cir. 2008) (quoting *United States v. Dandy*, 998 F.2d 1344, 1349 (6th Cir. 1993). Finally,  
 15 Judge Murguia previously held that “[n]o Court should tolerate even the slightest chance  
 16 that its continued participation in a high profile lawsuit could taint the public’s  
 17 perception of the fairness of the outcome.” [Doc. 138 at 27:10-11 (emphasis added)].

18 These principles support a finding that a reasonable observer would believe  
 19 that the actions of Judge Snow in this case demonstrates the appearance of bias. It is  
 20 uncontested that Defendant Arpaio and Chief Deputy Sheridan have already consented to  
 21 a finding of civil contempt and would stipulate to the facts as stated in the Court’s OSC  
 22 Order. [Docs. 748, 880, 948]. Judge Snow prevented Arpaio from utilizing his own legal  
 23 defense fund and ordered him to put “skin in the game” by pledging his own funds for  
 24 settlement of the contempt allegations, despite the fact that the suit was brought against  
 25 him in his official capacity only. Despite Defendant Arpaio’s willingness to comply with  
 26 this request, Judge Snow still ordered the contempt proceeding to continue. [Doc. 1007].

27 During the April 2015 OSC hearing, Judge Snow unexpectedly launched an  
 28 inquiry into matters entirely unrelated to the OSC hearing that directly implicated the  
 Court’s reputation and that of his spouse making him a material witnesses to this action



1 and in violation of Defendant Arpaio's constitutional due process rights. Moreover,  
 2 during these proceedings Judge Snow became an advocate by giving his own testimony,  
 3 asking leading questions, being argumentative with civil contemnors when they testified,  
 4 and taking evidence from outside of court. [Rotunda at ¶¶ 19-25; Rotunda Supp. at ¶ 16].  
 5 Judge Snow then subsequently directed his Monitor to investigate further into these  
 6 irrelevant matters. [Doc. 1117-1, Ex. 9., 5/14/15 Transcript at 49:15-21, 51]. Over  
 7 Defendant's objections, Judge Snow ruled that his Monitor would not be "shackled" by  
 8 Defendants' constitutional rights. [*Id.* at 56].

9 Finally, the perception of bias is not limited to events preceding the Motion  
 10 for Recusal. Despite Judge Snow entering a stay and ordering that he "shall issue no  
 11 further orders" in this matter until he issued a ruling on the Recusal Motion [Doc. 1120],  
 12 he still issued orders regarding the very irrelevant investigations he injected into the  
 13 proceedings, thus violating his own stay order. [See Doc. 1133 and 1134]. It was not  
 14 until Defendant Arpaio objected to the Court's violation of the stay [Doc. 1138] that  
 15 Judge Snow enforced his stay order, holding that if the Court were to issue any further  
 16 orders it would be to "preserve the status quo" of its previous injunctive orders. [Doc.  
 17 1141].

18 Pursuant to § 455(a), a reasonably objective observer, considering all of  
 19 Judge Snow's conduct referenced above, would believe that there is an appearance of bias  
 20 necessitating his recusal. See *United States v. Conforte*, 624 F.2d 869, 881 (9th Cir. 1980)  
 21 ("It is a general rule that the appearance of partiality is as dangerous as the fact of it.");  
 22 *Alexander v. Primerica Holdings, Inc.*, 10 F.3d 155, 163, 166 (3d Cir. 1993) ("When the  
 23 judge is the actual trier of fact, the need to preserve the appearance of impartiality is  
 24 especially pronounced."). Contrary to Plaintiffs' characterizations, nothing in  
 25 Defendants' Motion is based on "[r]umor, speculation, beliefs, conclusions, innuendo,  
 26 suspicion, opinion, or similar non-factual matters." *Clemens*, 428 F.3d at 1178; see also  
 27 *Holland*, 519 F.3d at 911 (To the extent the facts are disputed, the balance tips in favor of  
 28 recusal). Moreover, under § 455(a), this Court has previously held that recusal was

1 necessary when the comments of Judge Murguia's *sister* and her *organization* were highly  
 2 disparaging of Sheriff Arpaio. [Doc. 138 at 26-27]. Recusal in this instance is even  
 3 stronger under § 455(a) because undisputed allegations demonstrate that Judge Snow  
 4 *himself* has may have made highly disparaging comments regarding Defendant Arpaio.

5 **A. Plaintiffs' unfounded assertion that Arpaio manufactured a basis for**  
 6 **recusal is refuted by the uncontested record.**

7 Plaintiffs assert that the Montgomery investigation was leaked to the press  
 8 and led to the Court's inquiry of both the Grissom and Montgomery investigations.  
 9 [Response at 14]. Moreover, Plaintiffs assert that MCSO's investigations targeted the  
 10 Court. Both of these accusations are unfounded.

11 First, none of the communications cited in Plaintiffs' exhibits came from  
 12 Defendant Arpaio or Chief Deputy Sheridan. Plaintiffs do not have any proof, outside of  
 13 speculation, that either Defendants leaked the investigations to the press. Second, whether  
 14 Judge Snow would actually pick up on a news article reported by the Phoenix New Times  
 15 and then directly question Defendants on topics entirely irrelevant to the three clearly  
 16 defined OSC hearing topics is pure conjecture. Rather the *facts*, as Plaintiffs admit, are  
 17 that two different sources voluntarily, and on their own accord, came to MCSO and  
 18 provided information regarding Judge Snow. The record is devoid of any evidence that  
 19 the Defendants in this action solicited these sources. Moreover, upon receiving the  
 20 information voluntarily reported by these sources, Defendants and counsel had a duty to  
 21 investigate further to determine the veracity of the allegations made by these informants.  
 22 Out of respect for the Court, Defendant Arpaio did not proceed further, despite finding  
 23 that the Grissoms were credible.

24 **B. Plaintiffs' cited authority against recusal is inapposite.**

25 Plaintiffs argue that recusal is not warranted under § 455(a) based on Ninth  
 26 Circuit (and other) precedent where a judge is threatened by a litigant's suit or by a  
 27 litigant's intemperate or scurrilous attacks. *See e.g., United States v. Studley*, 783 F.2d  
 28 934, 940 (9th Cir. 1986). As stated above, neither Sheriff Arpaio nor any other MCSO

defendant ever threatened the Court. Again, it was **Judge Snow's** inquiry into these irrelevant matters that made them relevant. Had Judge Snow not injected the Grissom/Montgomery investigations into the proceeding, they would never have been at issue. Plaintiffs' cited case authority is, therefore, inapposite. [See Response at 14-15]. A reasonable observer in this case **would** conclude there is an appearance of bias.

**V. DEFENDANT ARPAIO'S RECUSAL MOTION WAS TIMELY.**

Plaintiffs argue that this Court should decline to rule on the Motion to Disqualify/Recuse Judge Snow because it was not timely made. Plaintiffs ignore, however, that Judge Snow's injection of the Grissom/Montgomery investigations into the OSC hearing and his subsequent orders directing the Monitor to explore these investigations **generated** the grounds for this Motion. Timeliness of a Motion to Disqualify/Recuse must be based on the grounds for disqualification. *See U.S. ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, No. CV06-1381PHX-NVW, 2008 WL 169636, at \*11 (D. Ariz. Jan. 16, 2008) (timeliness for each ground for recusal "must be analyzed independently."). Moreover, unlike § 144, a motion for recusal under § 455(a) does not have a strict timeliness requirement. *U.S. v. Kehlbeck*, 766 F.Supp. 707 (S.D. Ind. 1990); *see also Conforte*, 624 F.2d at 880 ("we leave open here the question whether timeliness may be disregarded in exceptional circumstances."). Accordingly a recusal motion filed eighteen months after the case was assigned to a judge was timely in *Preston v. U.S.*, 923 F.2d 731, 733 (9th Cir. 1991) ("recusal motions should be filed with reasonable promptness after the ground for such a motion is ascertained.").

Despite Plaintiffs' mischaracterizations, Defendants' Motion clearly argued that the perception of Judge Snow's bias and the appearance of impropriety was demonstrated when he injected the Grissom and Montgomery investigations into the April 2015 civil contempt proceedings. Defendant Arpaio never argued that the grounds for recusal arose out of the Grissom/Montgomery investigations themselves, but that it was this Court's improper inquiry into these matters during an OSC hearing with three clearly

defined topics, none of which included the Grissom/Montgomery investigations, which made these investigations relevant to the proceedings. [Rotunda Supp. at ¶ 13]. Defendants' Motion was filed on May 22, 2015. Like in *Preston*, the Motion was timely filed because the grounds for recusal did not arise until, at the earliest, April 23, 2015. Moreover, Judge Snow's subsequent Orders, directing that his monitor be given unfettered access to investigate these irrelevant matters did not occur until May 14, 2015. The Motion was therefore filed roughly within *one month* after Judge Snow's injection of the Grissom/Montgomery investigation into the OSC proceeding, and within a *week* of his subsequent Order expanding his monitor's authority to investigate into these irrelevant subjects. Therefore, the Motion is timely.<sup>10</sup>

#### **VI. DEFENDANTS' MOTION IS NOT PRECLUDED.**

Even presuming that a motion brought pursuant to 28 U.S.C. § 144 may be precluded, the Court must still consider the motion under 28 U.S.C. § 455. *Adesanya v. W. Am. Bank*, 19 F.3d 25 (9th Cir. 1994). Regardless of § 144, then, Defendants' Motion must be considered under § 455.

#### **VII. CONCLUSION**

Defendant Arpaio respectfully requests that: (1) Judge Snow recuse himself from these proceedings and (2) if Judge Snow declines to recuse himself, that this Motion be assigned to another United States District Court judge for immediate consideration.

---

<sup>10</sup> Regardless, the Court should decide the merits of this Motion. In recusing herself under § 455(a), Judge Murguia previously recognized that "because the Court must abide by an unwavering commitment to the perception of fairness in the judicial process, it will not deny the petition on the basis of timeliness and will instead address the substantive questions raised by the request for recusal." [Doc. 138 at 13:3-6]. This concern equally applies here. *See Bradley v. Milliken*, 426 F.Supp. 929 (E.D. Mich. 1977) (despite a motion for recusal being untimely, because plaintiffs' asserted grounds for recusal were true, the judge could not sit on the case regardless of any implied waiver or untimeliness of motion).

1 DATED this 22nd day of June, 2015.

2 JONES, SKELTON & HOCHULI, P.L.C.

3  
4 By s/ John T. Masterson

5 John T. Masterson  
6 Joseph J. Popolizio  
7 Diana J. Elston  
8 Justin M. Ackerman  
9 2901 North Central Avenue, Suite 800  
10 Phoenix, Arizona 85012  
11 Attorneys for Defendant Joseph M. Arpaio  
12 in his official capacity as Sheriff of  
13 Maricopa County, AZ

14 JONES, SKELTON & HOCHULI, P.L.C.

15  
16 By s/ A. Melvin McDonald

17 A. Melvin McDonald  
18 2901 North Central Avenue, Suite 800  
19 Phoenix, Arizona 85012  
20 Attorneys for Defendant

21 IAFRATE & ASSOCIATES

22 By s/ Michele M. Iafrate

23 Michele M. Iafrate  
24 649 North Secnod Avenue  
25 Phoenix, AZ 85003  
26 Attorneys for Defendant

27 MITCHELL STEIN CAREY, PC

28 By s/ Lee Stein

Barry Mitchell  
Lee Stein  
One Renaissance Square  
2 North Central Avenue, Suite 1900  
Phoenix, AZ 85004  
Attorneys for Gerard Sheridan

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22 day of June, 2015, I caused the foregoing document to be filed electronically with the Clerk of Court through the CM/ECF System for filing; and served on counsel of record via the Court's CM/ECF system.

/s/ Sruti J. Patel