

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

3
4 Manuel de Jesus Ortega)
Melendres, et al.,)
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) May 7, 2014
Joseph M. Arpaio, et al.,) 10:05 a.m.
8)
Defendants.)
9 _____)

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15 REPORTER'S TRANSCRIPT OF PROCEEDINGS

16 BEFORE THE HONORABLE G. MURRAY SNOW

17 (Status Conference - Sealed Proceedings Omitted)
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21

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25 Proceedings taken by stenographic court reporter
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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Identified</u>
1	Document prepared by MCSO with updated information provided to Chief Kiyler when she was assessing interim compliance on Thursday, May 1, 2014	23

10:30:30

P R O C E E D I N G S

THE COURT: Thank you. Please be seated.

THE CLERK: This is civil case 07-2513, Melendres v. Arpaio, on for status conference.

10:05:33

Counsel, please announce.

MR. POCHODA: Dan Pochoda for the ACLU of Arizona for plaintiffs.

MS. WANG: Good morning, Your Honor. Cecillia Wang of the ACLU for the plaintiffs.

10:05:42

THE COURT: Good morning.

MR. CASEY: Good morning, Your Honor. Tim Casey for the defendants. With me is my co-counsel, Tom Liddy, from the Maricopa County Attorney's Office.

Also with me is --

10:05:51

CHIEF DEPUTY SHERIDAN: Chief.

MR. CASEY: Chief Deputy -- I always get the words confused -- Jerry Sheridan; Larry Farnsworth; Russ Skinner from the Court Compliance/Implementation Unit, Your Honor.

THE COURT: Good morning.

10:06:07

I just remind those who are in the public gallery that while you're allowed to use devices, if you wish, to record manually by type, there is no recording of these proceedings allowed, and if you are observed recording the proceedings you will be removed, just to remind you.

10:06:31

1 I did have my clerk distribute, I believe, to both
2 parties a few minutes before the hearing began, I've taken
3 material from a report Chief Warshaw gave me, the monitor, and
4 I have all the material that pertains to the compliance with
5 the court order, or the monitor's assessment of that
6 compliance, I've had retyped and distributed to you a few
7 moments ago.

10:06:51

8 Were you not able to give it to them, Brian?

9 All right. Go ahead.

10 I assume -- after he gave me that report, I received
11 from the monitor this morning --

10:07:03

12 And by the way, Chief Martinez, are you there on the
13 line?

14 CHIEF MARTINEZ: Yes, sir. Good morning, Your Honor.

15 THE COURT: Good morning. I received from the monitor
16 additional materials that were provided him by the Sheriff's
17 Office that were updated concerning compliance. He's informed
18 me that, of course, he has not been able to verify those at
19 this date, but I figured, Mr. Casey, that you were going to
20 take us through them, anyway.

10:07:15

10:07:31

21 MR. CASEY: I apologize, Your Honor. I was focusing
22 on what your clerk had handed to me and so I wasn't paying
23 attention. I apologize.

24 THE COURT: All right. I was just saying that I
25 received this morning from the monitor materials that you

10:07:41

1 provided either this morning or late last evening that are
2 graphic materials pertaining to MCSO's compliance with my
3 enforcement order. I haven't had a chance to review them in
4 any detail.

5 The monitor, of course, informed me when he
6 transmitted them to me that he hasn't been able to verify them
7 in addition -- or take any steps other than the report I've
8 given you to verify compliance, but I assume you're going to
9 take us through that report now, anyway.

10:07:57

10 MR. CASEY: If the Court would like, yes, I have
11 Commander Farnsworth here to address this in whatever order
12 you'd like, Your Honor.

10:08:09

13 THE COURT: All right. Well, do plaintiffs have any
14 objection if I have the defendant take us through their -- and
15 describe their compliance with my order?

10:08:27

16 MR. POCHODA: No, Your Honor.

17 THE COURT: All right. Mr. Casey.

18 MR. CASEY: Yes, Your Honor.

19 Larry, you can come up. We're going to approach.

20 Your Honor, what I understand has been handed out and
21 I provided to your clerk this morning, I also gave plaintiffs'
22 counsel this, I believe this is what was provided to the Court
23 yesterday. It's a -- one, two, three, four -- five-page sheet
24 about Court Compliance and Implementation Division, about the
25 April 17th corrective statement.

10:08:40

10:09:07

1 The key phrase, if I was to summarize this, would be
2 at page 2, where there is some highlighted there about the
3 breakdown of employees who have completed the required reading,
4 documentation, and signed the attestation log, and there are
5 two dates there, Your Honor. One is from May 1st. Why is
6 that? Because that's the first date I think that Sherry Kiyler
7 was there --

10:09:29

8 CAPTAIN FARNSWORTH: Yes.

9 MR. CASEY: -- from the monitor team. And then from
10 yesterday as of 2:00 p.m. And also we have other documents
11 that Larry Farnsworth can address as to why those who have not
12 signed have not signed. For example, Family Medical Leave Act,
13 or they're serving overseas in Iraq or Afghanistan.

10:09:40

14 But with that, I'm going to turn it over to Larry
15 Farnsworth to deal specifically -- he's obviously prepared to
16 answer your question either by avowal to the Court or under
17 oath, whatever your preference is.

10:09:57

18 THE COURT: Well, I'll accept your avowal,
19 Chief Farnsworth, but I will say that if the plaintiffs want to
20 ask you questions, at that time I may put you under oath.

10:10:13

21 CAPTAIN FARNSWORTH: Yes, sir.

22 THE COURT: All right. Go ahead, please, sir.

23 MR. CASEY: If you would just go ahead and explain for
24 the Court what the overall summary is in terms of what was
25 done --

10:10:26

1 THE COURT: I'll tell you what let's do, just so
2 everybody can see this. You have next to you an ELMO.

3 Can we bring up the ELMO, Kathleen?

4 And why don't you just put the sheets that you've
5 provided the Court on the ELMO. We'll put them up on the
6 monitor. That way, plaintiffs' counsel and everyone in the
7 gallery can see what you're describing for me, and I can see it
8 clearly, too.

10:10:40

9 It will take just one moment for us to bring it up.

10 Do you have access to that yet, Mr. Liddy?

10:10:59

11 MR. LIDDY: Yes, I do, Your Honor. It's not on the
12 larger screen, however.

13 THE COURT: Yeah, we'll get it up there.

14 Ms. Wang, can you see it on your monitor?

15 MS. WANG: Yes, Your Honor. Thank you.

10:11:12

16 MR. CASEY: With the Court's permission, I'll serve as
17 not the scribe, but maybe the --

18 THE COURT: Page-turner?

19 MR. CASEY: The page-turner, that's -- yes.

20 THE COURT: That will be fine.

10:11:26

21 (Off-the-record discussion between the Court and the
22 clerk.)

23 THE COURT: It will just take one moment before I let
24 you begin, Mr. Farnsworth, or Commander Farnsworth.

25 Is it Captain or Commander?

10:11:32

1 CAPTAIN FARNSWORTH: It's Captain.

2 THE COURT: All right. Thank you.

3 There we go. All right. Now, what you see on your
4 screen is what everybody else sees on their monitors.

5 CAPTAIN FARNSWORTH: All right, Your Honor. The first 10:11:48
6 page is a listing of Sheriff's Office employees. It's broken
7 out by sworn, detention, and civilian. It's all compensated
8 employees within the Sheriff's Office.

9 On the very first page you can see there's two dates.
10 The first one's May 1st, 2014. That's the day the date was -- 10:12:01
11 met with the monitor's representative. It's also the date that
12 the Court had required that we be in compliance.

13 The 5-6 of '14 at 2:00 p.m. was yesterday's date. We
14 had to have a cutoff. These are the number of employees that
15 we have within the Sheriff's Office, based on classification. 10:12:20
16 And it's a fluid number -- people resign, people get hired --
17 so the base number at the bottom of the report is we now have
18 3,381 employees, different by one from the day -- Thursday of
19 3,382, so we've lost one employee, there's a net loss of 1.

20 That's page 1. Any questions, Your Honor? 10:12:45

21 THE COURT: I'm not sure I have the same numbers.

22 Give me a second.

23 Oh, okay. The sheet I'm looking off is apparently not
24 an updated sheet. I'll look off the screen like everyone else.

25 Okay. I'm following you. 10:13:01

1 MR. CASEY: How would you like us to proceed, Your
2 Honor?

3 THE COURT: Well, let me ask, do plaintiffs have any
4 questions based on the first page?

5 MR. POCHODA: Not at this time. We may have some
6 overall about who --

10:13:08

7 THE COURT: That's fine. I'm just going to go page by
8 page. I'm not going to prevent you from asking some overall
9 questions --

10 MR. POCHODA: Thank you.

10:13:17

11 THE COURT: -- at the end.

12 Go ahead, Captain.

13 CAPTAIN FARNSWORTH: Okay. That's the end of page 2,
14 I'll move to page 2 -- end of page 1, I'll move to page 2.

15 Page 2 is the breakdown of employees, again by level
16 of classification: sworn, detention, and civilian. On the
17 sworn side -- and because the order required that we have both
18 line officers and supervisors, this was broke out that way.

10:13:26

19 As far as the sworn staff, we had 475, and now as of
20 5-6 it's 480. The highlighted yellow part is the delta, or the
21 change between the two, so we increased 400 -- 1.4 percent,
22 being that that's how many more signatures we got, people
23 complied with the order. It wasn't that it was because they
24 came back from vacation or military or whatever it was they
25 came back from.

10:13:52

10:14:13

1 So the second line is -- there's supervisors,
2 sergeants, and above, and we had 158. We had a 99.3 percent
3 compliance. The reason it's 99.3 is we have somebody off on
4 medical leave, so that's why it's not a hundred percent.

5 Going back to detention staff we have 1,117, or
6 96.6 percent. I'm sorry, sir.

7 THE COURT: That's all right. I'll let you go through
8 the page and then I'll ask my question.

9 MR. CASEY: Okay. Please continue.

10 CAPTAIN FARNSWORTH: Okay. And so it's a 1 percent
11 increase in the number of signatures and training that we
12 required.

13 MR. CASEY: And that's on the detention side.

14 CAPTAIN FARNSWORTH: Yes, on the detention side.

15 MR. CASEY: This is supervisors for detention side.

16 CAPTAIN FARNSWORTH: Right. And then it's a
17 .7 percent increase, or 275, and we're at 98.9 percent
18 compliance with that.

19 MR. CASEY: Okay. What's this next category?

20 CAPTAIN FARNSWORTH: The next one is civilian staff
21 and we're at 546. As of yesterday we're up, increased by
22 .9 percent, 97.1 percent compliance rate.

23 The civilian staff we're -- will be equivalent of a
24 sergeant above. We're at 98.3 percent, and it's increased by
25 1.6 percent.

10:14:33

10:14:45

10:14:54

10:15:05

10:15:26

1 And our total civilian staff is 1.3 percent increase
2 from what it was on Thursday.

3 The total compensation aggregate for all MCSO
4 employees is that we're at 97.5 percent compliance. And the
5 reason we're not at a hundred percent, again, is statement 10:15:43
6 because of staff that are on medical leave, vacation, sick
7 time. We do have a listing of all those employees, and if we
8 have the information as far as when they anticipate return,
9 then we have that listed.

10 We do have a policy and practice in place that 10:15:59
11 addresses both when those employees come back that they cannot
12 return to duty until they complete their training and sign the
13 attestation log.

14 MR. CASEY: And so I make it clear for the Court, is
15 this the log that identifies who's not signed, and the 10:16:15
16 reason --

17 THE COURT: You know, Mr. Casey, I appreciate any
18 clarifications you want to make, but if you would speak into a
19 microphone so that the court reporter and I and everybody else
20 can hear you. 10:16:24

21 MR. CASEY: I apologize, Your Honor.

22 Is this the document?

23 CAPTAIN FARNSWORTH: That's correct. That's the
24 document listing all employees that haven't signed.

25 MR. CASEY: Your Honor, for the record, we have a 10:16:33

1 color-coordinated document entitled "MCSO Employees Who Have
2 Not Signed Attestation Logs."

3 THE COURT: Um-hum.

4 MR. CASEY: And briefly, I'm going to just put this up
5 on the board to give the Court -- you may have seen this 10:16:43
6 already, but this goes through the reasons why, it's all color
7 coded, the reasons why they have not signed an attestation log,
8 so it can be followed up, et cetera.

9 CAPTAIN FARNSWORTH: Yeah, the color coding is to show
10 what rank, what classification they are. There's a color 10:17:02
11 schedule in the back that tells what red and blue and green and
12 gray are. But this is what we track to find out why they
13 haven't done it so we're staying on top of it.

14 It actually changes day to day. When I walked in my
15 office this morning there was two attestation logs that had 10:17:17
16 come in, so it's a continuous shooting target as far as
17 completion.

18 THE COURT: And when you get the -- from here on out,
19 when you get the logs, I assume you'll just provide the updates
20 to the monitor. 10:17:30

21 CAPTAIN FARNSWORTH: Yes, sir.

22 THE COURT: All right. I just had a couple of
23 questions, but I think what I'll do before I ask them is I'll
24 let you get through all of the sheets and then I'll ask my
25 questions. You may or may not know the answers to them. 10:17:42

1 MR. CASEY: And I guess the next question I have for
2 you, Captain Farnsworth, is: What else out of this particular
3 document would you like to explain to the Court to show what
4 has been done, if anything?

5 CAPTAIN FARNSWORTH: The third page just gives the 10:17:55
6 breakdown based on that color-coded descriptor of who has not
7 done what, both by classification, pretty self-explanatory.

8 MR. CASEY: Next page.

9 CAPTAIN FARNSWORTH: Next page, please. That's just a
10 continuation from the third page. This is the total number of 10:18:14
11 employees that remain -- have not been take -- have not been
12 addressed, so --

13 MR. CASEY: And what is this next page?

14 CAPTAIN FARNSWORTH: The very last page is the posse,
15 the posse page that -- the total number of posse personnel that 10:18:27
16 we have. That includes also a listing of our reserves, and
17 they're active retired reserves.

18 And the bottom of the page talks -- gives us the
19 statistical breakdown. As far as the posse, we've had a
20 39 percent increase in signatures from Thursday till today, or 10:18:48
21 till yesterday. We now are at 1,410 that have become
22 compliant, or 78.4 percent, active reserves are at a
23 hundred percent compliance right now, and retired active
24 reserves are at 56.6 percent.

25 And the reason that that number, just an explanation 10:19:08

1 on active retired, they were typically deputy sheriffs that
2 have retired, continue to keep their status as a peace officer,
3 but they may be anywhere in the nation, and so getting to them
4 is problematic as far as they've been sent letters, they've
5 been sent e-mails, but we haven't got a response back yet.

10:19:28

6 MR. CASEY: Please tell the Court if I, Tim Casey, am
7 a member of the posse, I happen to live in the metro Phoenix
8 area and I refuse, for whatever reason, to sign this, what's
9 the result?

10 CAPTAIN FARNSWORTH: All posse members were
11 inactivated and cannot perform any function as a posse member
12 until they become compliant. That was distributed to all posse
13 and posse commanders.

10:19:42

14 MR. CASEY: Thank you. Is there anything else about
15 this document, Captain Farnsworth, that you think is important
16 for the Court to know, for the plaintiffs' lawyers behind you
17 to know, about your efforts; what's been done; what do you hope
18 to accomplish?

10:19:56

19 CAPTAIN FARNSWORTH: Your Honor, this is a continuing
20 process until it's a hundred percent compliant. We'll continue
21 to manage it. We'll continue to provide to the monitor our
22 updates. And we have a process in place to ensure that people
23 don't go back and don't do anything until they've completed
24 this training and the signature attestation log.

10:20:14

25 THE COURT: All right. I appreciate that. I just

10:20:30

1 have a few follow-up and then I'm going to, as I said, allow
2 the plaintiffs to ask follow-up, and if it would be easier for
3 the plaintiffs, I might have you come sit in the witness box
4 when you do that.

5 Would you prefer to have Captain Farnsworth sworn? 10:20:43

6 MR. POCHODA: Yes, we would, Your Honor.

7 THE COURT: All right. Captain Farnsworth, would you
8 please step right here.

9 MR. CASEY: May I also hand this to the witness?

10 THE COURT: You certainly may. 10:21:01

11 MR. CASEY: (Handing).

12 THE CLERK: Please raise your right hand.

13 (Larry Farnsworth was duly sworn as a witness.)

14 THE CLERK: Thank you. Please take our witness stand.

15 LARRY FARNSWORTH,

16 called as a witness herein, having been duly sworn, was
17 examined and testified as follows:

18 EXAMINATION

19 BY THE COURT:

20 Q. Captain, I just have a few questions, and I'm going to ask 10:21:29
21 them first. After I ask you my questions, I'm going to allow
22 plaintiffs to ask their questions, and then I'll allow your
23 attorneys to ask any follow-up or clarification questions that
24 they might have. All right?

25 A. Yes, sir. 10:21:43

1 Q. A couple of days after I entered my enforcement order, the
2 MCSO requested clarification and a limitation of my order, and
3 I did limit my order in some aspects. But in both cases, two
4 major categories, I provided, if you want, an out of compliance
5 for the MCSO.

10:22:04

6 In both of those categories I required the sheriff to
7 make certain attestations to me. One wasn't quite so
8 demanding. It involved volunteers that serve in the jail, and
9 all that you had to do was indicate that all these folks are
10 religious or instructive volunteers that serve in the jail and
11 the sheriff just had to sign and say that's all -- the only
12 connection they have with the MCSO.

10:22:23

13 Has the Sheriff's Office invoked that certification?

14 A. Yes, sir, they have. I brought a copy with me, both of the
15 roster and the sheriff's request to have them excused. It's
16 only the -- the jail volunteers that we ask, but I do have a
17 copy, and it's --

10:22:38

18 Q. That's all right. How many jail volunteers were excused
19 from the order, do you know?

20 MR. CASEY: You need your file, sir?

10:22:51

21 THE WITNESS: I do. I think it's 780, but I'm not a
22 hundred percent sure.

23 BY THE COURT:

24 Q. That's fine. A rough estimate is fine for me. Let me --

25 MR. CASEY: May I approach?

1 THE COURT: Sure.

2 MR. CASEY: This is your file?

3 THE WITNESS: Yes, sir. Thank you.

4 BY THE COURT:

5 Q. Now, Captain, there was also another category, and this was 10:23:08
6 more -- I imposed more limits on the ability for the sheriff to
7 get excused for complying with other employees. I set forth
8 certain criteria that the sheriff had to attest to.

9 Were any MCSO either volunteer posse members,
10 volunteers, or MCSO paid staff, excused from compliance by 10:23:31
11 virtue of what I'll call that second possible way of being
12 excused from compliance?

13 A. No, sir, there was -- there was zero on that part. The
14 only ones that were excused were the jail volunteers.

15 Q. All right. Now, I don't know whether you'll know the 10:23:50
16 answer to this, but the request by the MCSO gave rise to
17 certain questions, because, as you will have gathered by my --

18 I assume you read my response to your request. It
19 was --

20 A. Several times. 10:24:04

21 Q. -- filed as a supplemental order. I'm not sure to what
22 extent there is overlap in MCSO functions, I'm not sure to what
23 extent detention personnel may also supplement their salary by
24 doing -- by engaging in law enforcement, traffic control, and
25 other things, but have you made any attempt to determine that? 10:24:23

1 A. No, sir. There was no attempt at all.

2 Q. All right. In the substantive trial of this matter,
3 evidence was admitted into evidence that involved -- and I went
4 back and looked at it a little bit in connection with your
5 request for clarification. Evidence was admitted that when the
6 287(g) certification of the Sheriff's Office was revoked --

10:24:45

7 Do you know what I'm talking about now?

8 A. Yes, sir.

9 Q. -- the Sheriff's Office hired an exterior consultant from
10 Kansas to come in and train what it said was 900 enforcement
11 personnel about their inherent authority to enforce federal
12 immigration law. And I'm concerned that my corrective order,
13 of course, cover all those folks. It seems to me that you've
14 made a very good-faith effort to make sure that it has. But I
15 was interested that that 900 figure doesn't seem to match up
16 with any of the subsets that you've provided me here today.

10:25:02

10:25:29

17 Do you have any idea who the persons were, who the 900
18 people were that received what I determined to be the erroneous
19 training that the Sheriff's Office had the inherent authority
20 to enforce federal immigration law?

10:25:47

21 A. Your Honor, I -- I can't speak to it. I don't have
22 knowledge of it. As far as the 900, we have 2,055 detention
23 officers, so I know that a majority of the 287(g) that were
24 trained, many were within the jail system, but I don't know
25 where the 900 --

10:26:08

1 Q. Yeah. It did seem, the evidence did suggest that 287(g)
2 training there was a jail component and there was a non-jail
3 component. Is that also your understanding?

4 A. That's my understanding, yes, sir.

5 Q. All right.

10:26:20

6 THE COURT: Well those are my questions. Thank you,
7 Captain.

8 Plaintiffs?

9 EXAMINATION

10 BY MR. POCHODA:

10:26:34

11 Q. Captain, good morning. I just wanted to get some
12 clarification about what these documents mean.

13 This document that was up and that was showed to
14 everybody, this is something you prepared, is that right?

15 A. My staff did, but I was part of it, yes, sir.

10:26:44

16 Q. And you gave this to the monitor's office yesterday, is
17 that accurate?

18 A. Yes, sir, I did.

19 Q. And what else did you give? What other documents
20 accompanied this that went to the monitor?

10:26:57

21 A. Actually, you know what? I have to retract that. I
22 believe I provided it to the monitor this morning, not this --
23 not yesterday.

24 Q. Thank you. Whenever you provided it to the monitor, were
25 there any other documents or information provided to the

10:27:13

1 monitor --

2 A. There were three other documents that we provided to the
3 monitor. One was the -- a list of the efforts that we had
4 conducted to be compliant with this order. It's a four-page
5 document. And then the other one is the color-coded document
6 of employees who have not signed the attestation log. Those
7 three documents were provided to the monitor this morning.

10:27:29

8 THE COURT: You know, if I can interrupt, I'm not
9 sure, Brian, did you distribute this to the parties? Can you
10 come take a look at it?

10:27:47

11 Because I've actually received three separate
12 documents from the monitor this morning that he, at least,
13 represented were provided to him, and I just want to make sure
14 that he didn't give me something that you're unaware of,
15 Captain.

10:28:02

16 You didn't give that? All right.

17 Do you recognize the document I've just handed you?

18 THE WITNESS: Yes, sir.

19 THE COURT: Is that something you also provided the
20 monitor this morning?

10:28:22

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. Do you want to describe that
23 for Mr. Pochoda.

24 And Mr. Pochoda, if you'd like to get a look at it,
25 you can approach the witness and retrieve it.

10:28:31

1 And then Mr. Casey, I don't know if you've seen this
2 or not, but maybe you want to come up and take a look at it,
3 too.

4 MR. CASEY: Is it, Your Honor, different than what he
5 went over on the --

10:28:44

6 THE COURT: It is.

7 MR. CASEY: It is?

8 THE WITNESS: This is what I sent the monitor, so this
9 is what I just received.

10 MR. CASEY: Your Honor, I apologize. Is this what you
11 just handed the witness?

10:28:59

12 THE COURT: It is.

13 If you want to take it back to the podium and take a
14 look at it, both of you.

15 MR. POCHODA: Sure.

10:29:11

16 (Pause in proceedings.)

17 MR. POCHODA: I won't stop to read this all now, Your
18 Honor, but if we could have it marked for the record.

19 THE COURT: That's fine.

20 Kathleen, would you please mark the document. Just
21 mark it as Exhibit 1.

10:29:40

22 (Off-the-record discussion between the Court and the
23 clerk.)

24 THE COURT: Then we'll put it as Plaintiffs'
25 Exhibit 1.

10:29:51

1 THE WITNESS: Your Honor, if I could clarify, when the
2 monitor visited with us on Thursday, we provided Chief Kiyler
3 with documents to help her with the report, and then the
4 monitor asked us on Friday to provide what we provided to her.

5 So we provided to them on Friday what was provided to 10:30:14
6 Chief Kiyler on Thursday. I sent updated documents to them
7 this morning at 7:00 a.m.

8 THE COURT: All right. So this document is the
9 updated document -- or a document with updated information that
10 you'd provided to Chief Kiyler when she was assessing interim 10:30:32
11 compliance with you last Thursday?

12 THE WITNESS: Yes, sir.

13 THE COURT: All right. Thank you.

14 You'll see, Mr. Pochoda, and I don't know if you've
15 had a chance to review Chief Kiyler's report that I also 10:30:45
16 submitted to you this morning.

17 MR. POCHODA: We have not yet.

18 THE COURT: All right.

19 BY MR. POCHODA:

20 Q. Maybe I could just briefly, then, we'll take a look at 10:30:53
21 this, but if you could indicate what you base this report on,
22 the one that you did provide them on it, or what
23 documents/data/information did you look at to get these numbers
24 and figures?

25 A. I just -- 10:31:09

1 Q. How did you know, for example, that it was 98 percent of a
2 certain category that indeed had read and signed? How did you
3 come to that conclusion?

4 A. Okay, now I understand your question.

5 We have a master log of all employees within the 10:31:26
6 Sheriff's Office on that date, and we compared all the
7 attestation logs to the master list. And then on the master
8 list every attestation log had been numbered. And so on the
9 master list we have a list of where the signature is so we can
10 go back and document on an audit function. 10:31:48

11 So the master list has the name, has the -- the
12 number of the attestation number that we gave to it so that we
13 can go back and do an audit for it, and that's where our
14 numbers came from.

15 Q. Let me ask something about those, what an attestation log 10:32:05
16 looks like and what information it contains, but first let me
17 ask you: Did you provide the monitor the corresponding
18 attestation logs?

19 A. A copy of every one of them, no, we did not.

20 Q. So the monitor just got this, the conclusions from -- drawn 10:32:19
21 from those logs.

22 A. The monitor, while they were here, we showed them our
23 process of how we did the -- the audit, and then we -- she
24 randomly picked, I believe, 10 names, and I may be wrong on the
25 number, I'm not sure exactly, but she randomly picked names 10:32:36

1 from the -- she had the logs, so she went by the logs and --
2 or, I'm sorry, she went by the master list. Showed me on the
3 master list, Here it is, the names. Then she said, Show me the
4 signature and the attestation, you know, the attestation log.
5 We provided that to her from the number.

10:32:56

6 And then she went out to further verify that and
7 randomly select people in the Sheriff's Office -- we had both
8 logs with us so that we could show the master, the signature,
9 and the real person -- and then she interviewed the real
10 person.

10:33:12

11 Q. You did not, in providing -- or deciding what to provide
12 the monitor, take a look at the Court's order of April 17th of
13 2014 that indicated you should provide the attestation logs as
14 well to the monitor?

15 A. Yes, it did say that. And we provided all the requested
16 documents that the monitor asked us for.

10:33:33

17 Q. As opposed to what is in this court order of April 17th.

18 Let me strike that.

19 What does an attestation log look like? What
20 information for a command staff -- let's start with the command
21 staff. What information is in there for each person who's a
22 member of the command staff at MCSO?

10:33:50

23 A. I apologize to you. I didn't bring a copy with me.

24 The line officer is different than from the
25 supervisor --

10:34:06

1 Q. Yeah, the command staff, the higher-ups.

2 A. From sergeant and above --

3 Q. Yeah.

4 A. -- because the order required that they had a different --
5 they had more reading to do, so the logs were different. And I 10:34:14
6 apologize I didn't bring copies of either one.

7 Q. But if you can describe what -- for any one particular
8 person who's in that category, what would be the entries, the
9 columns in an attestation log for that person?

10 A. It would have their name printed, their serial number, 10:34:29
11 their assignment, their signature, and on the top header part
12 of the document would say under -- under -- and I'm -- please,
13 I'm -- I've not memorized it, but basically it would say that I
14 attest that I complied with the required orders and the reading
15 that was -- that was required, and that was listed in that on 10:34:52
16 every one of the logs.

17 And then under our policy for providing false
18 documentation, if you did that you could be charged with or
19 some complaint with false documentation. So it was a clear
20 statement that says, you know, You need to be -- to be truthful 10:35:11
21 with everything that you signed.

22 Q. Right. And if you recall, do you remember what the
23 specific documents on the top of the command staff logs were
24 that they attested that they had read, or were there specific
25 documents listed at all, or just a general statement, We have 10:35:28

1 complied with the Court's orders?

2 A. No, sir, it was created from the order itself, and we
3 listed the specific what had to be read.

4 THE COURT: Let me ask, Captain Farnsworth, do you
5 have any problem providing the plaintiffs with a copy of --

10:35:41

6 THE WITNESS: No --

7 THE COURT: -- those logs?

8 THE WITNESS: -- I have nothing. I can do that when
9 we get back.

10 BY MR. POCHODA:

10:35:47

11 Q. I appreciate that.

12 A. I apologize for not bringing it with me; I should have.

13 Q. And just briefly, how were these distributed? Where do the
14 folks who signed it, both the command staff and the sergeants
15 and below the sergeants, where were these logs located
16 physically that they were able to sign them?

10:36:02

17 A. They were -- they were part of a briefing board that went
18 out, and so on a -- on a log, depending on how many people were
19 in the group, I could have one signature or I could have, I
20 believe, 25 signatures. It went to everybody within the
21 Sheriff's Office. There wasn't a person -- it went to all
22 supervisors, all employees. It was an e-mail that we have an
23 e-mail distribution that went to everybody.

10:36:23

24 Q. We'll take a look at the logs, but since we're here for the
25 moment, was there any part of that form that indicated that the

10:36:39

1 person who signed it had taken the time to understand the
2 documents?

3 A. I don't remember what the -- I don't remember what the
4 wording said, but -- I don't remember what the wording said. I
5 couldn't -- I couldn't testify to it right now. 10:36:56

6 Q. You don't remember if they -- if they stated, I have read
7 them and I took the time to understand them, or they just said,
8 I have read them?

9 A. I don't recall, Your Honor --

10 Q. Thank you. 10:37:07

11 A. -- I'm sorry.

12 Q. In any event, Captain Farmsworth -- excuse me, Farnsworth,
13 whether they attested to understanding or not, did the MCSO
14 take any steps, for the group or any individual, to test
15 whether they had in fact read and understood the documents? 10:37:37

16 A. Yes, sir, there was. There was a random survey. Every
17 supervisor and commander was asked to conduct a random survey
18 of three of their employees and asked the question, Did they
19 read it, and did they take the time to read it, and com -- I
20 believe read and comprehend, but I'm -- I don't know that's the 10:37:57
21 exact wording. I could provide a copy of the survey. We have
22 the documents of that also, and -- and the results.

23 Q. But there were no questions about the content of those
24 documents to the people who asserted they had read them.

25 A. No, sir, because they were different levels. The 10:38:12

1 supervisors had one level of reading they had to and the line
2 officers had a different, so we didn't have a different
3 questionnaire for each.

4 Q. All persons had to --

5 A. Can I clarify?

10:38:25

6 Q. Please.

7 A. I do believe it said, Do you understand that there was
8 racial -- that decisions were -- law enforcement decisions were
9 made. Do you understand that law enforcement decisions were
10 made that were based on racial profiling? I'm misquoting what
11 I'm saying, but there was a questionnaire that asked if there
12 was two questions that were specific to it, to the order.

10:38:39

13 MR. POCHODA: Thank you.

14 THE COURT: Thank you. Any follow-up?

15 MR. CASEY: Yes, sir.

10:38:55

16 THE WITNESS: To clarify a question, I did bring the
17 master log of what all the signatures were and how the process
18 works if -- it's a thick, long, lengthy document, but it does
19 show all the employees, their sig -- not their signatures, but
20 where they are in the log process, so -- it's the master list
21 that we're using, so --

10:39:15

22 THE COURT: Does it show what the attestation was that
23 each employee made?

24 THE WITNESS: No, sir, it didn't. I didn't --

25 THE COURT: All right.

10:39:25

EXAMINATION

BY MR. CASEY:

Q. Captain, quickly, in follow-up to plaintiffs' counsel's questions, what was the date that you met with Chief Kiyler, monitor?

10:39:32

A. May 1st.

Q. And did you provide the master list of employees to Chief Kiyler?

A. I did.

Q. And did you provide her access to the actual logs for her to review if she so chose?

10:39:39

A. Yes. In fact, we actually did a random sampling of about 10.

Q. Did you also offer Chief Kiyler a thumb drive of all the information and data of any type that she might want?

10:39:52

A. Yes.

Q. Did she accept that invitation?

A. She advised me to contact the monitor team on Monday and ask -- and advise -- find out from them what documents they wanted.

10:40:07

Q. Okay. And did you do that?

A. Yes. Actually, I talked to them on Friday, they called me on Friday, so yes, we did.

Q. And who is "they"?

A. Chief Warshaw.

10:40:15

1 Q. Chief --

2 A. I'm sorry, Chief Martinez.

3 Q. Chief Martinez. Did Chief Martinez make specific request
4 of you of what he wanted?

5 A. Yes.

10:40:23

6 Q. And did you provide that to Chief Martinez --

7 A. I did.

8 Q. Okay. Was there anything that was asked of you by the
9 monitor team that was not provided to the monitor team?

10 A. No, sir, everything was provided.

10:40:33

11 Q. All right. Now, you mentioned earlier that the -- the
12 attestation was directly from the Court's order.

13 Did I understand that correctly?

14 A. That's correct.

15 Q. And you also said you don't remember specifically the
16 attestation, but I want to see if this refreshes your
17 recollection, okay?

10:40:45

18 A. Yes.

19 Q. That each person that was asked to sign was asked whether
20 or not they actually read it, is that a correct statement?

10:40:58

21 A. That's correct.

22 Q. And the second thing is whether they took sufficient time,
23 in their own subjective judgment, to try to understand what
24 they read. Is that a correct statement?

25 A. I believe that is a correct statement.

10:41:12

1 Q. Okay. So I'm not holding you to the precise verbiage, but
2 generally that's what your understanding is of what this
3 honorable court required, right?

4 A. Yes.

5 Q. And that's what you required as compliance for everyone to 10:41:24
6 read it, right?

7 A. Yes, sir.

8 Q. All right. Now, you also -- in closing here, you also
9 mention that there were sort of a -- an internal test. Do you
10 remember answering that series of questions by Mr. Pochoda? 10:41:35

11 A. Could you clarify again? Sorry.

12 Q. Yeah. Mr. Pochoda asked you, Well, how do you know if they
13 understood it? Do you remember that section?

14 A. Yes, we did a random sampling.

15 Q. All right. And there were two questions, weren't there? 10:41:48

16 A. Yes, there were.

17 Q. And to refresh your recollection, was one of the questions,
18 quote, Did you carefully read the seven-page corrective
19 statement document from Judge Snow? Yes or no.

20 A. Yes. 10:42:00

21 Q. Does that sound accurate to you?

22 A. That's correct.

23 Q. Without holding you to the exact verbiage.

24 A. Yes, sir.

25 Q. Okay. And the second question which was asked randomly 10:42:06

1 was: Do you understand that Judge Snow in the Melendres v.
2 Arpaio court decision found that the Maricopa County Sheriff's
3 Office impermissibly used race or ethnicity as one factor among
4 others in making law enforcement decisions? Yes or no.

5 Was that generally what was asked of --

10:42:26

6 A. Yes, sir, that's correct.

7 Q. Okay. Now, the final area that I want to make sure is
8 important because you mentioned that everything that was
9 attested to by anyone in the MCSO was pursuant to your
10 truth telling policy, isn't it?

10:42:38

11 A. That's correct.

12 Q. And so it's clear for the Court, and with the Court's
13 indulgence, leading you a little bit, but that is a policy that
14 says if you lie, that is a terminable, fireable offense, isn't
15 it?

10:42:51

16 A. Yes, sir, and it's been followed strictly. It's if you
17 lie, you die, basically is --

18 Q. Okay.

19 A. -- you go away.

20 Q. You lie, you die, yes?

10:42:58

21 A. Yes, sir.

22 Q. And so if they tell their supervisor that they've read
23 something this Court has ordered and they haven't, lie or die.

24 A. Yes, sir.

25 Q. If they don't sufficiently understand it and they've

10:43:08

1 attested it --

2 Now, everyone has their own abilities to understand
3 things. Some of the orders -- some of the lawyers have
4 difficulty understanding sometimes certain parts of orders, but
5 they have an obligation to fully understand to their best
6 ability, right?

10:43:25

7 A. Yes, sir.

8 Q. And if they don't tell the truth, that's lie or die, right?

9 A. That's correct.

10 MR. CASEY: All right. Those are all the questions.

10:43:33

11 Thank you, Your Honor.

12 THE COURT: Thank you.

13 Any follow-up?

14 MR. POCHODA: No, Your Honor.

15 THE COURT: Ms. Wang?

10:43:39

16 MS. WANG: Your Honor, I'm sorry to interrupt. I just
17 was a little bit unclear. I think Captain Farnsworth said that
18 he provided Chief Kiyler from the monitor's office with the
19 document that was projected on the ELMO this morning, which was
20 a summary of the compliance numbers, and three other documents,
21 and I'm not sure he ever managed to finish listing those three
22 documents.

10:43:53

23 THE WITNESS: There were two other documents, and it
24 wasn't the document that was provided today because today's
25 document has yesterday's -- up to yesterday's statistics. So

10:44:09

1 what Chief Kiyler was provided was what we had complied with on
2 that Thursday, May 1st, date. So it's a different document,
3 but there was only three documents provided to her.

4 MS. WANG: And what were the other two documents, sir?

5 THE WITNESS: The documents were the status or the 10:44:30
6 percentage of update, what we've done to comply with the order,
7 a time line type, and I believe it was also those that had
8 failed to -- the color coded one that hasn't -- hadn't --
9 hasn't been complied with yet.

10 MS. WANG: Thank you. 10:44:48

11 THE COURT: The parties, perhaps, have not been able
12 to read Chief Warshaw's summary to me of Chief Kiyler's
13 activity. In addition to doing the session that chief -- or
14 that Captain Farnsworth described, you'll see that Chief Kiyler
15 indicates that she randomly went to two different districts 10:45:10
16 within the MCSO and selected patrol, or sworn officers randomly
17 from those districts, and then quizzed them about their
18 compliance with the policy and found that everyone that she had
19 contacted was in compliance with the policy.

20 It is clear to me that the monitor -- well, it seems 10:45:31
21 to me, based on the testimony, that the Sheriff's Office is in
22 substantial compliance with my enforcement order, and to the
23 extent that the Sheriff's Office is not in complete compliance,
24 they have implemented policies which will require complete
25 compliance before anyone reassumes any law enforcement 10:45:51

1 responsibilities or obligations.

2 To the extent that there may yet remain an inadequate
3 level of understanding at the MCSO, that is something that the
4 monitor will continue to verify compliance on, and so I am
5 going to find the MCSO in compliance with my enforcement order,
6 subject to only if when you see the actual attestation
7 language, Mr. Pochoda, you feel like it's inadequate, you can
8 indicate as much to me, but based upon the clarification
9 provided Mr. Casey, it sounds to me like the attestation
10 language is in compliance with my order. And so I am going to
11 find, at least -- I'm going to find, unless you can demonstrate
12 otherwise, that the MCSO is in compliance with my April 17th
13 enforcement order.

10:46:11

10:46:31

14 Thank you, Captain. You may step down.

15 Is there anything else that we need to raise while
16 we're all here?

10:46:46

17 MR. CASEY: Your Honor, I would like to approach the
18 bench for a sidebar, with plaintiffs' counsels' permission, on
19 a matter, just a housekeeping matter, real brief, but I think
20 it might be important.

10:46:59

21 THE COURT: All right. Is there a reason why we need
22 to do it at sidebar? Is there a personal matter, or something
23 that --

24 MR. CASEY: Yes, Your Honor.

25 THE COURT: All right.

10:47:07

(Bench conference on the record.)

(Page 37, Line 2, through Page 46, Line 18, sealed by
order of the Court.)

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19 (Bench conference concluded.)

20 (Pause in proceedings.)

10:59:23

21 THE COURT: All right. Other issues, Ms. Wang?

22 MS. WANG: Just to keep the Court apprised of some

23 other issues that we're conferring with the defense about,

24 there are a number of issues about the training that's required

25 under this Court's supplemental injunction. We're meeting and

10:59:45

1 conferring with Mr. Casey.

2 As the Court knows, the plaintiffs have proposed a
3 list of alternative or additional instructors for those
4 training subjects, and we're conferring both with the defense
5 and with the monitor about that. We plan to get our comments
6 on the two training curricula that MCSO has prepared and
7 submitted to the monitor in to the monitor and the defense on
8 time, which would be next Wednesday, which is the 14th.

11:00:00

9 THE COURT: All right. Anything on that, Mr. Casey?

10 MR. CASEY: No, Your Honor. Thank you.

11:00:22

11 THE COURT: All right. I will just offer, the monitor
12 is very good at keeping me apprised of everything that's going
13 on. It's one of his many strengths.

14 Let me just say, I have a word or two, an observation
15 or two to make; otherwise, I will let him handle the matter.

11:00:34

16 But out of a desire to comply with my order as it pertains to
17 my legal rulings, and the order requires that there be a
18 bar-certified lawyer involved in that training, the monitor has
19 observed, and he has apparently spoken directly with the

20 County's curriculum subcontractor, the monitor suggested, and I

11:00:58

21 wouldn't think there's a whole lot of disagreement about this,
22 but in case there is I want to raise it now, that in order to
23 make the training of value to law enforcement officers, the
24 deputies who are actually going to receive it, I am going to
25 require that there be a certified lawyer there. But lest we

11:01:20

1 engage in too much lawyer-speak that a typical deputy can't
2 understand, it would be my expectation that there is also an
3 experienced law enforcement officer who can translate what may
4 be legal language into practical street language involved in
5 that training.

11:01:45

6 Is there going to be any objection to that by the
7 County?

8 MR. CASEY: No.

9 THE COURT: Any objection by the plaintiffs?

10 MR. POCHODA: No.

11:01:53

11 MS. WANG: No.

12 THE COURT: All right. So if that oral clarification
13 is enough, I will deem it enough, but if we're going through
14 the exercises I've deemed that we must do to provide this
15 supplemental -- provide this additional training with new
16 policies, I want to make sure that it is a training that is of
17 value and can be appreciated, understood, and applied by the
18 deputies and those who receive it. So I'm going to be very
19 open to things that, while legally correct, and we have the
20 assurances that they are legally correct, are also practically
21 understood and understandable by those who must benefit from
22 the training, and that, I hope, would not be an object of too
23 much disagreement between the parties.

11:02:05

11:02:26

24 All right. With that, then we will have the minor
25 status matter I've set for next week, and then we will proceed

11:02:44

1 under the terms of the order.

2 One moment.

3 (Off-the-record discussion between the Court and the
4 court reporter.)

5 THE COURT: I am going to authorize the Sheriff's
6 Department and/or the plaintiffs to have a copy, if they
7 request it, of the matters that occurred under seal. But, of
8 course, when you get that copy -- I'm going to authorize that
9 without further order of the Court, but if you do get such a
10 copy, it must remain under seal. All right? Thank you.

11:02:58

11:03:13

11 (Proceedings concluded at 11:03 a.m.)
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C E R T I F I C A T E

I, GARY MOLL, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 15th day of May, 2014.

s/Gary Moll