

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

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4 Manuel de Jesus Ortega)
Melendres, et al.,) **SEALED PROCEEDINGS**
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) May 14, 2014
Joseph M. Arpaio, et al.,) 10:02 a.m.
8)
Defendants.)
9 _____)

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 BEFORE THE HONORABLE G. MURRAY SNOW

16 (10 O'clock a.m. Status Conference, Pages 35-104)

17 **SEALED PROCEEDINGS**
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25 Proceedings taken by stenographic court reporter
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P R O C E E D I N G S

THE COURT: Please be seated.

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

10:02:57

Counsel, please announce.

MR. POCHODA: Dan Pochoda, ACLU of Arizona, for plaintiff.

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

10:03:10

THE COURT: Good morning.

MR. CASEY: Good morning, Your Honor. Tim Casey, and with me is co-counsel Tom Liddy of the Maricopa County Attorney's Office.

Obviously, with us you recognize some of the faces: Jerry Sheridan, Joseph Arpaio. Ken, is it?

10:03:19

CAPTAIN HOLMES: Yes.

MR. CASEY: Ken Holmes --

CAPTAIN HOLMES: Ken Holmes.

MR. CASEY: -- from Internal Affairs.

10:03:28

SERGEANT BENTZEL: Sergeant Jason Bentzel, also from Internal Affairs.

MR. CASEY: And I think that will be it who may be speaking to you, and I turn it over to you, Your Honor.

THE COURT: All right. I'd like to see the parties

10:03:40

1 alt sidebar, please.

2 (Bench conference on the record.)

3 THE COURT: All right. Everybody knows our sidebar
4 mike is a little not sensitive enough, so when you speak,
5 please make sure you get close. 10:04:04

6 Ms. Wang, Mr. Pochoda, there are matters that have
7 come to my attention through the monitor, items disclosed by
8 the MCSO to the monitor in good faith --

9 MR. POCHODA: Um-hum.

10 THE COURT: -- that it seems to me involve an ongoing, 10:04:19
11 and perhaps now areas of new investigation that in order to
12 preserve evidence must be kept confidential.

13 That being said, because they relate directly to this
14 lawsuit, as well as, perhaps, to many other collateral
15 things -- 10:04:40

16 MR. POCHODA: Um-hum.

17 THE COURT: -- and who knows what, but because they
18 relate to this lawsuit, I just do not feel comfortable
19 proceeding without plaintiffs being aware of the nature of what
20 you have found. 10:04:50

21 And I've reviewed the order. I can give you the --
22 the actual paragraph numbers that I think are applicable. But
23 it would be my recommendation that I receive a motion to put
24 this hearing under seal, and whoever the other side is can
25 object if they want. 10:05:06

1 Do I have such a motion?

2 MR. CASEY: To put it under seal?

3 THE COURT: Yes.

4 MR. CASEY: Yes. I'm moving on behalf of the
5 defendants to put this under seal for the basis, Your Honor,
6 that while Charley Armendariz has committed suicide, is no
7 longer subject to criminal charges, this is a criminal ongoing
8 investigation that may lead to other MCSO personnel, also
9 involving witnesses, evidence potential tampering, obstruction,
10 things like that. And so even though Charley is no longer --
11 Charley Armendariz is no longer subject to administrative
12 penalties or criminal sanctions, this may lead -- is a criminal
13 investigation that could lead anywhere.

10:05:14

10:05:32

14 THE COURT: Yeah. And what I would propose to say to
15 the public simply is that because this matter involves what
16 I -- or may involve what I have defined in the order as a
17 special operation, and "special operation" actually refers to
18 patrol activities involving traffic stops.

10:05:50

19 MS. WANG: Um-hum.

20 THE COURT: But it's my understanding that some of the
21 material definitely involves traffic stops here.

10:06:07

22 MR. POCHODA: Um-hum.

23 THE COURT: So I don't think I'm misstating the facts
24 if I just say this pertains to a special operation as defined
25 by the order and so the Court is going to put this hearing --

10:06:16

1 the Court has moved and is -- it has been moved and the Court
2 has granted the motion that this hearing is under seal until
3 further order of the Court.

4 MS. WANG: Um-hum.

5 MR. CASEY: Yes. I also want to put on the record 10:06:28
6 that I had some traveling yesterday, so I wasn't able to
7 communicate with anyone in this hearing today, but I did, right
8 before this hearing started, speak with plaintiffs' counsel
9 Cecillia Wang and Dan Pochoda and invited them, subject to the
10 Court's permission, to be in this room during this presentation 10:06:47
11 on behalf of my clients, the MCSO, because the monitor is also
12 here. It is important that everyone be aware of it.

13 THE COURT: Well, I appreciate that, because -- I
14 appreciate that sign of good faith, and I clearly would have
15 involved you, anyway, but I'm glad you're -- 10:07:00

16 MR. CASEY: But I wanted you to know that I appreciate
17 the Court's position, but it was a -- as counsel, we thought
18 they needed to be here.

19 THE COURT: All right.

20 MR. CASEY: I'm glad they're here. We never did 10:07:09
21 invite them so I'm glad they're here.

22 THE COURT: All right.

23 (Bench conference concluded.)

24 THE COURT: All right. Ladies and gentlemen, I have
25 received a motion at sidebar to put this hearing under seal. 10:07:29

1 There is a substantial amount of case law that requires
2 virtually everything that we do be done in public. On
3 occasion, however, there are reasons that justify putting a
4 matter under seal. One of those reasons I set forth in my
5 order pertain to special operations by the Maricopa County
6 Sheriff's Office, both anticipated and ongoing special
7 operations.

10:07:50

8 After having received the explanation, there is no
9 objection by either party to proceeding under seal, and so I
10 will -- I am going to grant the motion, subject to anybody
11 making an objection who may have one in the audience.

10:08:05

12 Is there any such objection?

13 Okay. Hearing none, I am going to now put this
14 hearing under seal and it will remain under seal only so long
15 as is necessary as determined by further order of this Court.
16 And so the courtroom will now be cleared. Thank you.

10:08:23

17 (The courtroom is cleared.)

18 MR. CASEY: Your Honor, I --

19 THE COURT: Just one moment, please, Mr. Casey.

20 All right. I recognize the United States marshals in
21 the room; I recognize my clerk staff; I recognize the members
22 of the MCSO that were introduced to me.

10:09:13

23 I don't know who three people who weren't introduced
24 to me are, so I want them introduced to me or I want defendants
25 to avow that they're MCSO personnel.

10:09:29

1 MR. CASEY: Christine Stutz is a Maricopa
2 county attorney, works with Tom Liddy, who has been working
3 with the monitor and the MCSO on HR employment issues, trying
4 to make sure things are in compliance.

5 Angelo, what is your last name? 10:09:48

6 SERGEANT CALDERONE: Calderone.

7 MR. CASEY: And Angelo Calderone works with the MCSO
8 and is with the sheriff.

9 And I apologize --

10 MR. HEGSTROM: Chris Hegstrom. 10:10:01

11 MR. CASEY: Chris is also with the MCSO, and Chris is
12 in media? He's in media relations, and he -- I just wanted to
13 put on the record that even though he's with media relations,
14 what happens here does not go to the media.

15 And then I think I introduced everyone else? 10:10:17

16 THE COURT: Yes. I will indicate that the four
17 persons in the back of the room are all United States Marshals
18 and authorized by my order to be here.

19 Do plaintiffs have any question about anybody else in
20 the room? 10:10:32

21 MS. WANG: I don't think we heard what Mr. Calderone's
22 position is at the MCSO.

23 MR. CASEY: He is the head of the personal security
24 for the sheriff, Your Honor.

25 MS. WANG: Thank you. 10:10:42

1 THE COURT: Okay. Do the --

2 MR. CASEY: Goes wherever the sheriff goes.

3 THE COURT: Do the defendants have any questions about
4 anybody else in the room?

5 We need to have Chris's last name.

10:10:54

6 MR. HEGSTROM: Chris Hegstrom. H-e-g-s-t-r-o-m as in
7 Mary.

8 MR. CASEY: I have no other questions. My
9 understanding is that these are your law -- your capable law
10 clerks.

10:11:08

11 THE COURT: Oh, they're more than capable.

12 We also have Chief Martinez --

13 MR. CASEY: Yes.

14 THE COURT: -- and Chief Warshaw in the room.

15 MR. CASEY: Yes. No objections from the defendants,
16 Your Honor.

10:11:14

17 THE COURT: All right.

18 All right. I became aware yesterday through
19 disclosures made by the Maricopa County Sheriff's Office --

20 specifically, I believe, Chief Deputy Sheridan to the

10:11:28

21 monitor -- of some extensive information that I believe
22 requires this Court to address it, address on the record, and I
23 want to have an explanation of that evidence made available so
24 all parties can hear it pursuant to the terms of the order.

25 I will then have -- I want to explore it with the

10:11:53

1 parties to make sure that we are all on the same page, or if we
2 have objections, that I hear what they are and can rule on
3 them. And I want to make it clear how I expect the parties to
4 proceed to the extent that I have authority to do so.

5 And I will have questions for the parties. I 10:12:10
6 appreciate, Sheriff Arpaio, you being here. I may have
7 questions for you. I realize that you may not have all the
8 answers and you may need to defer to Deputy Chief Sheridan.

9 Deputy Chief Sheridan -- or Chief Deputy Sheridan, I'm
10 sorry, you may also not have all the answers. I'm not going to 10:12:30
11 place you under oath unless there's some specific reason to do
12 so. I would appreciate, however, your best effort at answering
13 any questions that I may have that aren't covered by a
14 presentation that I anticipate you intend to give us,
15 Mr. Casey. The only reason I say that is because you wanted to 10:12:43
16 use the monitor of the courtroom.

17 MR. CASEY: Your Honor, yes, I mean, we are prepared
18 to answer your questions. We also have, my understanding is
19 the clip of what you showed me on Monday. So we have -- we
20 just learned this as counsel, a lot of us learned it on Monday 10:13:16
21 afternoon at a briefing, and then I headed out of town to pick
22 up my son at Baylor, back at 2:30 this morning. The reason I
23 preface that is that Mr. Liddy capably told me that I may need
24 to share with you some background about what was found --

25 THE COURT: That would be good. 10:13:36

1 MR. CASEY: -- and I'm going to tell you, I'm going
2 off of my memory, which is fatigued, so they may have to get
3 it, but my understanding is that during the course of this, you
4 know, Mr. Armendariz has committed, unfortunately, suicide, God
5 rest his soul, but there is now still ongoing criminal
6 investigation, and during the course of the investigation it
7 was discovered that there are --

10:13:54

8 Is it 2500 hours? 5,000 hours of video?

9 CAPTAIN HOLMES: There's about 900 hours. There's
10 about 540 disks.

10:14:11

11 MR. CASEY: Okay. 540 disks. 500 hours?

12 CAPTAIN HOLMES: More like about 900.

13 MR. CASEY: 900? I'm sorry. Of traffic stops
14 conducted by Charley Ramon Armendariz.

15 It appears that he has both a dash cam; it appears
16 that he may have some type of camera mounted to the frames of
17 his glasses, so what you see on the screen is what he is
18 looking at. I saw clips presented to me by my client on Monday
19 afternoon, I believe it was two of them that I remember, and if
20 I remember correctly, the two clips were done in May of 2013 if
21 the legend on the lower right of the screen is accurate.

10:14:27

10:14:58

22 They show conduct of Charley Ramon Armendariz dealing
23 with one man in one image, would appear to be a Caucasian male.
24 The second image was a different traffic stop dealing with what
25 appear to be two Caucasians, one female, one male. And they

10:15:27

1 will be self-explanatory, but that is there for the Court to
2 evaluate.

3 We discussed with, obviously without waiving any
4 privilege, we knew that the monitor was coming in on the
5 following day, which was yesterday, needed to brief him on 10:15:45
6 that. What effect this has on this case, do not know, but what
7 I can tell you is that we are, as an organization, the MCSO
8 Internal Affairs is doing, as I understand it, two primary
9 things. They're quickly reviewing the huge volume of stored
10 data that no one knew existed. It appears that these -- and 10:16:11
11 we're trying to confirm this, that at least the camera that
12 appears to be part of the eyeglasses for Ramon Armendariz may
13 have been a personal purchase. We're trying to figure out when
14 that was done; when it started; why he recorded it; why it
15 wasn't logged into MCSO databases of some sort; why there was 10:16:42
16 no review, comparison to CAD data.

17 We are also, based on the stops, trying to identify
18 those that the MCSO internally looked at and say, let's put it
19 diplomatically, these are problems. So on Monday we saw two
20 problem stops and we're trying to figure out: Were there any 10:17:10
21 complaints that were ever made by these citizens? What became
22 of those incidences? They have a tremendous volume of other --
23 a universe of stops to find out. Anecdotally, my guess is
24 we're going to find more problems.

25 The second thing that they can address with you, and I 10:17:36

1 did not bring my sheet here, is the volume of data of license
2 plates, the volume of Arizona-issued licenses, the volume of
3 Mexican-issued licenses, and I apologize for the inconvenience.

4 (Pause in proceedings.)

5 MR. CASEY: Arizona driver's licenses, ID cards, right 10:18:17
6 now there are 153 that were seized pursuant to the search
7 warrant at Ramon Armendariz's residence on May 1st.

8 Out-of-state licenses, ID cards, there are 43 of them.
9 The one that is -- what we're really looking at is the Mexican
10 voter IDs, the consular cards, driver's licenses issued by the 10:18:40
11 states in Mexico, 180.

12 Mexican civil documents, that's just a broad category,
13 six. Mexican currency, bills, four, various denominations.
14 Social Security cards from the United States, 11. U.S.
15 immigration cards, five. Credit, debit, bank and merchant 10:19:03
16 cards, 26. Vehicle registrations, something labeled TRP, there
17 are five. Foreign passports, four. Miscellaneous cards or
18 papers, 49. And then actual license plates, either from
19 Arizona or out of state, are 104. And then Mexico are two.

20 My understanding is that we've done up to a certain 10:19:33
21 percentage, maybe all the license plates?

22 CAPTAIN HOLMES: All of the license plates.

23 MR. CASEY: And out of the U.S. ones, maybe how many
24 of them were actually expired?

25 CAPTAIN HOLMES: They were all expired. 10:19:48

1 MR. CASEY: They were all expired.

2 THE COURT: When you say they're all expired, you mean
3 they're all expired now.

4 MR. CASEY: They were expir -- well, yeah. What's
5 that mean? 10:19:56

6 CAPTAIN HOLMES: Yes. We understand that they were
7 expired --

8 MR. CASEY: This is Ken Holmes.

9 THE COURT: Sir?

10 CAPTAIN HOLMES: Yes. 10:20:03

11 THE COURT: If I could get you to approach a
12 microphone if you're addressing me, please.

13 MR. CASEY: And would you mention your first name,
14 please.

15 CAPTAIN HOLMES: Thank you, Your Honor. My name is 10:20:08
16 Ken Holmes, H-o-l-m-e-s. Our understanding is that they were
17 expired at the time they were taking, but it's still
18 information that is yet to be a hundred percent confirmed.

19 THE COURT: How do you get -- how do you obtain that
20 understanding? 10:20:24

21 CAPTAIN HOLMES: They ran a registration check on all
22 of the vehi -- at the time that they were expired, and that was
23 my understanding that they were expired at the time.

24 THE COURT: Well, have you been able to place the time
25 that the license plates were seized by Deputy Armendariz? 10:20:35

1 CAPTAIN HOLMES: That, I don't know yet.

2 THE COURT: So it's really impossible to -- I mean,
3 it's possible to know they're expired now, but it isn't
4 possible to know at this point whether they were expired at the
5 time Deputy Armendariz seized them. 10:20:52

6 CAPTAIN HOLMES: I would agree with that.

7 THE COURT: And I think I heard Mr. Casey talk about,
8 and I realize that this would be a very intensive undertaking,
9 but trying to match up these seizures with CAD data, has that
10 effort begun? 10:21:07

11 CAPTAIN HOLMES: It hasn't begun yet but is starting,
12 yes.

13 THE COURT: All right. Thank you.

14 Has there been any effort made to determine the race
15 of the persons that were not -- that had American 10:21:16
16 identifications or driver's licenses? And by "race," I realize
17 that we have to be careful, but I'm talking about hispanicity.

18 MR. CASEY: Particularly, what I understand the
19 question is is we do what we did at trial: looking at Hispanic
20 surname probability. 10:21:37

21 THE COURT: That would be fair enough. Have you --

22 MR. CASEY: Okay.

23 THE COURT: -- done that?

24 MR. CASEY: And my understanding is we are in the
25 process, the MCSO is in the process of trying to identify, out 10:21:43

1 of U.S. I -- or Arizona driver's licenses, out of the 153, what
2 names appear to be of Hispanic surnames.

3 But literally, just so the Court is aware, we have a
4 huge amount of work to do and try to do it as efficiently and
5 accurately as possible, so we don't -- I don't have that
6 information for you right now. 10:22:10

7 Do we have an idea? I know that -- go ahead,
8 Chief Sheridan.

9 CHIEF DEPUTY SHERIDAN: Your Honor, I might be able to
10 address how we're going to approach that. 10:22:21

11 What we have is two teams of detectives that are going
12 to review the data. We have over 500 DVDs with thousands of
13 hours of information on them.

14 With that, we've got eight detectives from Internal
15 Affairs under the direction of Captain Holmes that we have
16 chosen to review the data on the traffic stops. Those traffic
17 stops on those DVDs are realtime, and it takes -- 10:22:47

18 THE COURT: Do they have dates on them?

19 CHIEF DEPUTY SHERIDAN: Yes, sir. However, and we are
20 prepared to show you a few exemplars if you wish to see them
21 today. We're not sure if date and time stamp on those are
22 accurate. We feel that they're not because -- you'll see one
23 today -- it shows, like, 5 o'clock in the afternoon and it's
24 dark out. It's probably 2 o'clock in the morning. So we're
25 not really confident of that. 10:23:05
10:23:26

1 But the reason we chose eight detectives from
2 Internal Affairs is because we wanted those individuals who are
3 used to discussing policy, they know policy in and out and have
4 the same ethical microscope that they will look at the actions
5 of Deputy Armendariz from the same perspective. So we have one 10:23:46
6 team of detectives that are doing that.

7 Now, more on point to the last question of the hard
8 copy documents that we were discussing, we have a team of 10
9 detectives that are doing the research on these individual
10 documents along with two crime analysts and a lieutenant and a 10:24:11
11 few deputies that work at ACTIC, which is linked with Homeland
12 Security and have access to many databases. So when we want to
13 try and find somebody, a fugitive or somebody that we're
14 looking for, they have a lot of access to information that the
15 normal detective unit would not have. So we've also employed 10:24:38
16 them in an attempt to identify and contact the individuals
17 where we have hard copies of their IDs.

18 THE COURT: All right. Thank you.

19 Let me just step back a minute and I want to make a
20 few observations. They're going to, perhaps, be painful. I 10:25:04
21 don't intend them to be that way. But I think it's important
22 that we have clear understanding between us.

23 When did you take over your present responsibilities?

24 CHIEF DEPUTY SHERIDAN: It was September of 2010, sir.

25 THE COURT: And prior to you, who held your position? 10:25:34

1 CHIEF DEPUTY SHERIDAN: Chief Deputy Dave Hendershott.

2 THE COURT: All right. I realize that you may or may
3 not know the answer to the questions I'm about to ask, but I
4 want your best faith answer.

5 And Sheriff, if you have information, I expect you to 10:25:50
6 give it, okay?

7 SHERIFF ARPAIO: Yes.

8 THE COURT: I'm not going to put either one of you
9 under oath, but I expect your best best faith answer to the
10 questions I'm about to ask you. 10:26:02

11 If I understood correctly from the information that
12 I've received from my monitor about communications that you had
13 with him, and further, if I understood correctly what I've just
14 heard from your counsel, Deputy Armendariz had a dash cam and
15 he had an eyeglass cam. Did he have any other kind of camera 10:26:30
16 that we see recordings of?

17 CHIEF DEPUTY SHERIDAN: Not that I'm aware of, sir.

18 THE COURT: All right. Did the Maricopa County
19 Sheriff's Office issue eyeglass cameras to any of its officers?

20 CHIEF DEPUTY SHERIDAN: Not that I'm aware of. 10:26:46

21 THE COURT: Was the Maricopa County Sheriff's Office
22 aware that some of its officers were recording traffic stops?

23 CHIEF DEPUTY SHERIDAN: The best way to answer that,
24 Your Honor, is the dash cams would have been purchased and
25 installed by the Sheriff's Office, so the answer would be yes, 10:27:11

1 to some extent.

2 THE COURT: All right. How many dash cams were in
3 existence in 2010, do you know?

4 CHIEF DEPUTY SHERIDAN: I do not know.

5 THE COURT: Do you know what happened to the
6 recordings from those dash cams?

7 CHIEF DEPUTY SHERIDAN: I do not know.

8 THE COURT: You have counsel here, and I don't want to
9 compromise you in any way, but is there any reason to think
10 that other officers may have been doing what Deputy Armendariz
11 was doing, which is, in addition to whatever data they received
12 from the marico -- or data they recorded through MCSO-issued
13 devices, they were also doing their own recordings?

14 MR. CASEY: Your Honor, I just want to -- I'm going to
15 just lodge -- you're asking him to speculate about --

16 THE COURT: That's fine. And if you -- if you really
17 don't know, you should say you don't know. And let me make one
18 other thing clear before you answer this question so you'll
19 know where I'm coming from, and if plaintiffs have any
20 objection they can object.

21 I have reviewed my order this morning, and I believe
22 that there is very little doubt that your investigation of what
23 you have discovered is subject to my monitor's review because
24 of its association with this lawsuit and the issues that relate
25 to it.

1 I also am not unmindful that the Sheriff's Office has
2 done things that I didn't like very much and that I think
3 violated my order and I required you to undertake corrective
4 action and you've done so, and done so to my satisfaction in
5 terms of that corrective action. So there's reasons that I'm 10:29:15
6 wary of you, and also reasons that you have -- that you've
7 operated in good faith. I recognize that all of the
8 information you are now sharing with us is information you have
9 because you've come forward, and I respect that.

10 Let me say, however, that it must have occurred to you 10:29:31
11 that there is, in addition to this lawsuit, a broad range of
12 other potential ramifications for the information that you
13 contain. And so to the extent that I believe I have
14 jurisdiction over your investigation, and to the extent that
15 you have made the decision to maintain this investigation 10:30:00
16 instead of giving it out to another government -- investigative
17 agency, and even if you were to give out parts of it, it seems
18 to me you have to maintain certain parts that would then be
19 subject to my jurisdiction, let me tell you unequivocally what
20 I think. And Sheriff, Chief Deputy, my two monitors, if you 10:30:19
21 have questions about what I'm about to say, now's the time to
22 say it.

23 But it seems to me that the first thing we ought to do
24 before we analyze information is make sure that we gather all
25 the information that exists that needs to be analyzed. And it 10:30:38

1 seems to me if in fact the MCSO had dash cams that were
2 operating at the time, we need to know who had those dash cams,
3 and we need to know where those traffic stops are being held,
4 and we need to know who we have reason to believe may have
5 otherwise been recording traffic stop activity.

10:31:02

6 It is my understanding from my monitor, and I may have
7 misunderstood him so I'm telling you now, so you can correct me
8 if I do have a misunderstanding, that the MCSO had no policy
9 relating to the self-recording of traffic stops by deputies, is
10 that correct?

10:31:24

11 CHIEF DEPUTY SHERIDAN: That is correct, sir.

12 THE COURT: So it neither encouraged nor discouraged
13 or in any way regulated such activity.

14 CHIEF DEPUTY SHERIDAN: That is correct.

15 THE COURT: Do you have any reason to believe that
16 other deputies may have been doing what Deputy Armendariz was
17 doing, which is self-recording their police activities?

10:31:36

18 MR. CASEY: Your Honor, I just want to put on the
19 record, it is calling for speculation.

20 THE COURT: That's fine.

10:31:47

21 MR. CASEY: May I also just put on the record, Your
22 Honor, so to the extent it's clear for the Court, the reason I
23 contacted the monitor originally, the reason why we're here, is
24 because we agree, on behalf of the MCSO and Joe Arpaio, that
25 what we have discovered is pertinent to the monitor's scope of

10:32:03

1 his. There will be no mission creep allegation based on what
2 we have discovered here. I want that clear for the Court.

3 This presents issues beyond this litigation as well.
4 It needs to be -- information needs to be gathered responsibly,
5 thoroughly, and in good faith. The monitor needs to evaluate 10:32:32
6 it, my client needs to evaluate it, a lot of people need to
7 evaluate it, because, you know, there is that pending DOJ
8 lawsuit.

9 THE COURT: Yes. And let me just say, and I don't
10 mean to interrupt you if I haven't let you finish, that it 10:32:43
11 seems to me, and one of the reasons we're under seal -- and by
12 the way, if I find out that anybody in this room has disclosed
13 what is discussed here today, I will use the full authority of
14 this Court to make sure that you are corrected.

15 But it seems to me that the first thing that we ought 10:33:02
16 to do, because this information will inevitably leak, to the
17 extent it has not already, and if in fact there are any other
18 officers that are involved in recording their activity, either
19 legitimately through an MCSO-issued device, and I can't say
20 illegitimately because there was no policy, but otherwise 10:33:20
21 recording their activity, we need to recover that now.

22 Because particularly if they were involved in
23 surreptitious activity or activity that -- and I don't mean to
24 characterize anything that I haven't seen yet but you have
25 yourself characterized it, some of the stops as inappropriate, 10:33:38

1 if they realize that they may have taped stops that were
2 inappropriate that have relation to this lawsuit or otherwise,
3 their tendency is going to be to destroy that material.

4 And my first order of business, and I hope that you
5 join me in this, I expect you do, Chief Deputy, and I hope you 10:33:59
6 join me in this, Sheriff Arpaio, and I expect that you do, and
7 if you don't I want you to tell me right now, is the first
8 order of business is to obtain all of the material that is
9 possibly out there that we might be able to obtain before it is
10 otherwise -- 10:34:21

11 CHIEF DEPUTY SHERIDAN: Your Honor, if I can answer
12 your question.

13 THE COURT: Please do.

14 CHIEF DEPUTY SHERIDAN: Okay. I do believe that there
15 are other deputies that have recorded traffic stops and other 10:34:36
16 activities with their own purchased video cameras. We also
17 discovered within the past couple of months that the Sheriff's
18 Office purchased, under a GOHS grant, a Governor's Office
19 Highway Safety Grant, to be used during DUI stops, a series of
20 on-body video cameras that were issued to Lake Patrol deputies 10:35:11
21 during the task force, the DUI task forces.

22 When we discovered this about two months ago, we
23 talked about a policy. Where's the policy governing the
24 retention of these -- this evidence that is captured on these
25 devices? We discovered, Chief Freeman and I, that there was no 10:35:42

1 policy involved so I ordered that a policy be promulgated.
2 That policy was signed by me. It takes a period of time to
3 look at best practices policy, and that policy was initially
4 given to me about two weeks ago. I sent it back for some
5 questions and corrections. It was given to me yesterday. I 10:36:10
6 signed off on it yesterday. It goes into effect on the 15th of
7 this month. I do have a copy of that with the Briefing Board
8 that went out this morning addressing those issues.

9 THE COURT: I want to see it, but let me ask you
10 before we get there, because I want to drill down on this point 10:36:30
11 before I go to policy, does the policy involve requiring
12 deputies who've self-recorded data or requiring -- accounting
13 for videotape data that has been recorded through an MCSO or
14 other -- otherwise departmentally-issued device?

15 CHIEF DEPUTY SHERIDAN: I'm sorry, sir. I don't 10:36:53
16 understand your question.

17 THE COURT: Well, that's fine. Let me get to the
18 point a little bit more directly.

19 Does your policy have anything to do with gathering up
20 the recordings that have been made either by deputies through 10:37:03
21 their own personal device or through a departmentally-issued
22 device and accounting for that data?

23 CHIEF DEPUTY SHERIDAN: No, sir. However, in light of
24 the discovery of these disks on Friday afternoon, yesterday I
25 ordered the chief of patrol, Chief Trombi, to begin to identify 10:37:25

1 who has the devices and to gather any information on where
2 those videos were, and if they were not in evidence, to obtain
3 them.

4 We're in the very beginning of this investigation. We
5 have an internal investigation that --

10:38:01

6 THE COURT: I can appreciate that. Do you mind if I
7 interrupt you to just sort of drill down on that point you've
8 just made and --

9 CHIEF DEPUTY SHERIDAN: Yes, sir.

10 THE COURT: -- then I'll let you go on?

10:38:11

11 I want to do that, and I want to assist you in doing
12 it, and the monitor wants to assist you in doing it, and I
13 suspect the plaintiffs want to assist you in doing it, in the
14 way that will be the most effective and efficacious possible.
15 It occurred to me last night while I was thinking about this
16 that I could issue subpoenas for every one of your officers
17 that you believe has such information, requiring them to
18 disclose it. Alternatively, that may only result in them
19 destroying the data.

10:38:24

20 And so it might be better, to the extent that you and
21 the sheriff can feel comfortable doing so, quietly collecting
22 the data. But I would also want to know, if it can be quietly
23 collected, to not make a big fuss, I would also want to know
24 where it came from, where they were storing that data, and if
25 they claim to have deleted any such data, when they claim to

10:38:41

10:39:06

1 have deleted it.

2 If we have them on record making such statements, if
3 in fact further investigation finds that any officer likely had
4 such data, and that it might be -- might provide probable cause
5 to believe that they engaged in other criminal activity, we 10:39:24
6 would then have the basis, perhaps, if it was appropriate, to
7 seize where they claim they stored the data, and look at the
8 technology to determine and/or recover it.

9 It seems to me that we need to go to that level, but I
10 agree -- it seems to me that I tend to agree with any concern 10:39:42
11 that you express that if I take formal action at this point,
12 it's only going to drive -- and I'm not saying -- please, don't
13 misunderstand me. I'm not saying that the bulk of your
14 officers or deputies are crooked. But I'm certain that you
15 share my interest in determining exactly what they've been 10:40:01
16 doing and if any of are crooked, finding out that they have
17 been crooked, finding out what their activities are.

18 So do you have any input for me on that?

19 CHIEF DEPUTY SHERIDAN: Yes, sir. I would ask the
20 Court to allow us to do it in a softer manner than subpoenas. 10:40:15

21 I think we'll be more productive. And I understand your
22 concerns, and I think we share the same concerns about the
23 documentation of where/when/how this information has been
24 stored, because I would -- I'm guessing that not all those
25 videos have been stored properly in the evidence and property 10:40:45

1 room.

2 THE COURT: That would seem to be an assumption that I
3 would share. And so I will tell you that I will have my
4 monitor work with you to develop a pro -- if you want his
5 assistance. But I'm going to tell you that what I want from 10:41:02
6 the department and what I expect is -- and I understand that
7 the best way to do it may not be through my formal involvement,
8 but what I expect is a thought-through plan that is executed
9 very quickly, because this is all, likely, already through part
10 of the department, in which you can quietly gather up such 10:41:24
11 material, such data, and that you can determine where it was
12 held, when it was held, and if any particular officer says it
13 was deleted, when that deletion occurred, and from where. Or
14 destruction, if it was held on DVDs like Armendariz's.

15 Is there any other category of information that the 10:41:42
16 plaintiffs would suggest that the Maricopa County Sheriff's
17 pursue? With respect just to this topic.

18 MS. WANG: Your Honor, given that we're hearing this
19 for the first time, I think it's hard for us to determine
20 whether there are additional categories of data. I would ask 10:42:01
21 that MCSO, obviously, disclose whether other data besides
22 video recordings come to light and document those as well.

23 THE COURT: Well, we're not there yet. I'm about to
24 get there.

25 MS. WANG: Okay. 10:42:18

1 THE COURT: And I am not precluding you from making
2 requests for additional information. We're all doing this on
3 the fly, including the MCSO, but we're trying to recover and
4 maintain as much as information as quickly as we can, and it
5 seems to me that we need to act quickly.

10:42:35

6 Now, Chief Deputy Sheridan, Sheriff Arpaio, I'm a
7 little concerned about the dash cams. How many do we have out
8 there that the MCSO knows it issued?

9 CHIEF DEPUTY SHERIDAN: I do not know right now, Your
10 Honor.

10:42:49

11 THE COURT: Do you know if there was any repository
12 within the MCSO for such traffic stops?

13 CHIEF DEPUTY SHERIDAN: I do not know.

14 THE COURT: All right. So I take it you don't --
15 well, I would expect that you'd run down that information as
16 quick as possible. And again, whether individual officers have
17 maintained it, whether it's been maintained on police
18 department computers or other data, I would expect you would do
19 your best to gather that up.

10:42:59

20 Is that something that's reasonable to request?

10:43:13

21 CHIEF DEPUTY SHERIDAN: Yes, sir, it is.

22 THE COURT: All right. Let me tell you two other
23 concerns I have, and I want to check one second briefly with my
24 monitor.

25 (Pause in proceedings.)

10:43:23

1 THE COURT: I have two other matters I want to raise
2 with you. The monitor, in his initial activities, has come
3 across the fact that during the term of the traffic stops that
4 are at issue in this lawsuit there have been digital audio
5 devices that have been delivered to members of the MCSO to make 10:44:18
6 recordings of all such stops.

7 Are you aware of that?

8 CHIEF DEPUTY SHERIDAN: Yes, sir.

9 THE COURT: Where are such recordings kept?

10 CHIEF DEPUTY SHERIDAN: Those digital recording 10:44:29
11 devices are issued to all deputy sheriffs, and there is a
12 specific policy on the final repository of those in evidence in
13 the property room.

14 THE COURT: All right. Do you know how long such
15 material is maintained for? 10:44:51

16 CHIEF DEPUTY SHERIDAN: Well, if they're evidence,
17 Your Honor, it would be until the case has been adjudicated.

18 THE COURT: Yeah, I'm talking about recordings that
19 may not have resulted in any charges.

20 CHIEF DEPUTY SHERIDAN: That, I -- I do not know, sir. 10:45:05

21 THE COURT: All right. Can you find that out and do
22 your best, and I mean your level best, come up with a plan,
23 review it with the monitor if you will, if you need to, to
24 recover all of that data?

25 CHIEF DEPUTY SHERIDAN: Yes, sir. 10:45:20

1 MR. CASEY: And Your Honor, if I may add, I believe
2 the Court's order of October 2013 also has a provision in there
3 regarding document retention, length of time for data-related
4 material, which I understand, based on what I've heard here,
5 this would fall under that.

10:45:40

6 THE COURT: Well, clearly. But I want to make clear
7 that to the extent the order can be read as applying -- I mean,
8 I was under the misimpression, and I -- well, the order is
9 written as if there is no recording going on, because I believe
10 I was under that misimpression, and I suspect the plaintiffs
11 were as well.

10:45:56

12 MS. WANG: We were, Your Honor.

13 THE COURT: And now that I find out that recording was
14 going on, I believe that clearly, we need to find out what
15 those recordings were and recover them.

10:46:08

16 And I agree with you, Mr. Casey, there is a retention
17 requirement in the order which will maybe be extended,
18 depending upon how long it takes to -- for the plaintiffs to
19 digest this information and for it to be of use to others.

20 MR. CASEY: May I consult with my client briefly?

10:46:25

21 THE COURT: You certainly may.

22 (Pause in proceedings.)

23 MS. WANG: Your Honor, could we ask for clarification
24 on when the audio recordings began as a matter of policy?

25 THE COURT: You may certainly do so.

10:46:41

1 MR. CASEY: I'm sorry. I just needed to consult real
2 quick so I didn't misstate anything to the Court.

3 THE COURT: That's perfectly fine.

4 Do you know when the audio recording began, Chief
5 Deputy Sheridan? 10:46:56

6 CHIEF DEPUTY SHERIDAN: Your Honor, I -- I don't.
7 However, audio recording has been used by detectives for as
8 long as I can remember, in different formats as the technology
9 has changed, and -- several years ago, and that's as far as my
10 memory can allow me -- 10:47:17

11 THE COURT: Well, you will understand that's something
12 I'm very interested in?

13 CHIEF DEPUTY SHERIDAN: Yes, sir, and I will get that
14 time, because I know we made a large purchase of digital
15 recording devices for just about all deputy sheriffs throughout 10:47:29
16 the organization. And part of that was mandated by the change
17 in rules of how to investigate domestic violence cases and
18 those kinds of things, along with cameras and -- and those
19 devices to record evidence.

20 THE COURT: In addition to the dash-mount cameras or 10:47:54
21 any other cameras that MCSO may have issued, in addition to the
22 audio recording devices, in addition to any recording devices,
23 including audio or video recording devices that may have been
24 officers doing their own recording, I have received information
25 that the Maricopa County Board of Supervisors approved in 2005 10:48:17

1 a mobile computers program that was shut down by the office of
2 management and budget for the MCSO, but it was reapproved in
3 2007. And the first year of that program required patrol
4 computers, and the second and third year required electronic
5 citation capacity and cameras in cars, and detectives getting
6 computers and equipment.

10:48:43

7 Do you know anything about that program?

8 CHIEF DEPUTY SHERIDAN: No, sir, very little. I was
9 in charge of the jail system at that time.

10 THE COURT: All right. I'm going to ask you, in
11 conjunction with whatever else you do, to find out what may
12 have been recorded, to look into the mobile computer program as
13 it was partially implemented in 2005 or 2007, to determine what
14 recordings that that may have resulted in, and also gather
15 those recordings.

10:48:59

10:49:19

16 MR. CASEY: Does the Court have an MBOS executive
17 session or public meeting notice date that would help us
18 identify?

19 THE COURT: I do not.

20 MR. CASEY: Okay. Thank you, Your Honor.

10:49:32

21 THE COURT: The only information I have received is it
22 was -- that the paperwork for the MCSO labeled this stuff the
23 mobile computer program.

24 MR. CASEY: Okay, mobile computer program.

25 CHIEF DEPUTY SHERIDAN: Your Honor, that would mean to

10:49:49

1 me the MDCs, the mobile data computers in the patrol vehicles,
2 which on one of the videos you'll see Deputy Armendariz
3 actually using it, it's not a recording device; it's just a
4 communications tool in the vehicle to get -- it's part of the
5 CAD system, and -- but I will have to do the research on the 10:50:09
6 in-car cameras and those things --

7 THE COURT: Well --

8 CHIEF DEPUTY SHERIDAN: -- because I'm not familiar
9 with that.

10 THE COURT: That's fine. I will expect you to do 10:50:20
11 that.

12 CHIEF DEPUTY SHERIDAN: Yes, sir.

13 THE COURT: Now, let me just say I want the very first
14 thing to happen, unless you tell me this is unreasonable for
15 some reason, I think the very first part of your operation, and 10:50:29
16 I realize that the information you now have is extensive and
17 may well be damaging, but as I've said, I think that the first
18 obligation that you owe the public and that I clearly owe the
19 public, as well as the parties in this lawsuit, is that we find
20 out all the truth and gather all the information that may be 10:50:44
21 implicated here.

22 So I have listed for you certain categories of
23 recordings that I either believe or have reason to believe have
24 taken place, and some of that at least is in regard to
25 information that you've voluntarily disclosed, and I recognize 10:51:00

1 that.

2 But regardless of whether I've listed the kinds of
3 recordings that may or may not take place, I expect your plan
4 to be to find out what has been recorded, whether legitimately,
5 illegitimately, or whether just patrol officers doing it -- and 10:51:12
6 that doesn't necessarily mean it was wrong, but it wasn't
7 authorized by the department -- I expect you to find all of
8 that and to do your best to capture it.

9 And to the extent that you decide at some point my
10 assistance is necessary or wise in terms of being able to 10:51:27
11 identify particular officers and procedures that may have that,
12 I'm telling you, I'll give it to you.

13 Do you understand what I'm saying?

14 CHIEF DEPUTY SHERIDAN: Yes, sir.

15 THE COURT: Do you have any concerns about that, 10:51:42
16 Ms. Wang, before I go on?

17 MS. WANG: No, Your Honor.

18 THE COURT: All right. Now, I guess I want to ask
19 you, Chief Deputy Sheridan, in any of the recordings that you,
20 the department, has viewed, has there been anybody else other 10:51:54
21 than Deputy Armendariz that is MCSO personnel that is in those
22 recordings?

23 CHIEF DEPUTY SHERIDAN: Your Honor, I'd like to defer
24 the answer to that question to Captain Holmes, because the
25 videos that I have seen my answer would be no, but his would be 10:52:10

1 different.

2 THE COURT: All right.

3 CAPTAIN HOLMES: Thank you, Your Honor.

4 THE COURT: Thanks. Please identify yourself for the
5 record again. 10:52:18

6 CAPTAIN HOLMES: Ken Holmes, spelled H-o-l-m-e-s.

7 THE COURT: Thank you.

8 CAPTAIN HOLMES: Again, we've looked through maybe 250
9 traffic stops, of which the volume we believe to be somewhere
10 between 2500 and 5,000. But of the ones that we've watched, we 10:52:32
11 have noted possibly a couple of additional officers that were
12 present while Deputy Armendariz was conducting a traffic stop.

13 THE COURT: And in any of them would you characterize
14 Deputy Armendariz engaging in inappropriate activity in those
15 stops? 10:52:56

16 CAPTAIN HOLMES: With respect to the dispositions,
17 possibly.

18 THE COURT: Can you identify who those officers were?

19 CAPTAIN HOLMES: One I believe is Lieutenant Sousa was
20 present, and the other one I don't know the name currently, but 10:53:07
21 there are others that have recognized the voice.

22 THE COURT: All right. Well, thank you.

23 Do you have any other information that's responsive to
24 my question?

25 CAPTAIN HOLMES: No, Your Honor. Thank you. 10:53:22

1 THE COURT: Thank you.

2 MR. CASEY: Your Honor, before he sits down, and I
3 apologize, it's your courtroom, but I was wondering, would it
4 be helpful for you to get a feel for what they're estimating
5 right now as a time frame for reviewing this and staffing it?
6 Does that matter to the Court, or --

10:53:32

7 THE COURT: Well, it does matter to me, but as I said,
8 my first priority, I think, would be --

9 MR. CASEY: Sure.

10 THE COURT: -- to gather everything. Once we're sure
11 we've got everything we can get, at least we've got the data
12 that will give rise to the appropriate investigations at that
13 point. So I will get back to that, but I first want a time
14 plan in terms of gathering the material. That's what I'm more
15 concerned with at the moment.

10:53:42

10:53:58

16 Chief Deputy Sheridan, Sheriff Arpaio, of course I am
17 concerned to the extent to which other deputies may be involved
18 and have witnessed these inappropriate depositions, and I'm
19 highly concerned to the extent that Lieutenant Sousa, who was
20 also a witness at trial, may have been involved in those, and I
21 assume that you share my concern, is that correct, Sheriff?

10:54:21

22 SHERIFF ARPAIO: Your Honor, I didn't hear that
23 question. Could you --

24 THE COURT: Yeah. I assume that you share my concern
25 about others in the MCSO, particularly those who may have

10:54:39

1 supervisory responsibilities, that appear in those
2 videotapes, especially to the extent that they reflect
3 inappropriate activity on behalf -- on the part of your
4 deputies.

5 SHERIFF ARPAIO: Yes, I do.

10:54:53

6 THE COURT: And I assume, then, that your office will
7 take full and complete steps to investigate who may have been
8 aware that this activity was going on, no matter how high up
9 the chain it goes.

10 SHERIFF ARPAIO: That's right. We will do that.

10:55:07

11 THE COURT: Do you have a plan in place to do that?

12 SHERIFF ARPAIO: I have delegated the -- this
13 situation to the Chief Deputy, and I'm sure, with all his
14 experience, that he knows how to carry it out and put the
15 resources to accomplish that mission.

10:55:23

16 THE COURT: Well, sir, I appreciate that somebody that
17 has your office has to be able to delegate and has to be able
18 to trust who you delegate, but I just want to make it clear,
19 and I don't want this to sound like a threat, you understand
20 that you are the party to this lawsuit and so while it is
21 certainly appropriate that you delegate, you also need to be
22 involved in the supervision and the understanding and the
23 direction of -- and setting the tone that no matter who the
24 truth hurts or how it hurts, it's coming out.

10:55:39

25 SHERIFF ARPAIO: That's correct.

10:55:56

1 THE COURT: Are you going to be setting that tone?

2 SHERIFF ARPAIO: Yes.

3 THE COURT: And will you be involved in coordinating
4 with Chief Deputy Sheridan to make sure that that investigation
5 goes forward on that basis?

10:56:05

6 SHERIFF ARPAIO: He will keep me advised.

7 THE COURT: All right. And you will -- and you don't
8 share any concerns with my primary concern of making sure that
9 we find out all this data, and that we investigate it
10 appropriately.

10:56:19

11 SHERIFF ARPAIO: No. I can understand your concern,
12 and I've been in law enforcement 50 years, many years as a top
13 federal official and all over the world, so I understand the
14 concern of the courts, the federal system, and now as the
15 elected sheriff we will do everything we can to get to the
16 bottom of this.

10:56:38

17 THE COURT: All right. And you will cooperate
18 completely with my monitor.

19 SHERIFF ARPAIO: Yes, I --

20 THE COURT: And no information will be withheld from
21 him.

10:56:50

22 MR. CASEY: Your Honor, with all due respect to the
23 Court, I just -- he can answer that question, but where we --
24 we have an obligation to work with Your Honor's monitor under
25 your order, and quite frankly, I think we have. I don't want

10:57:05

1 to be a nitpicking lawyer, but I think we have, and it sounds
2 from the -- if someone were to read that transcript, it makes
3 it sound as if we've not been cooperating with the monitor.

4 THE COURT: Well, I appreciate your avowal that you'll
5 cooperate with the monitor in the future, and I don't mean to
6 characterize anything or infringe on your right to make
7 clarifications, Mr. Casey, and you've done that.

10:57:22

8 You will cooperate with the monitor, Sheriff?

9 SHERIFF ARPAIO: Yes. If we have some differences --

10 THE COURT: Bring them to me.

10:57:34

11 SHERIFF ARPAIO: -- I'm sure we will bring that
12 forward and try to alleviate any problems.

13 THE COURT: And do that in a timely fashion. But
14 with -- to me. But in the meantime, I believe that all records
15 and all activity pursuant to any of these investigations is
16 under his authority.

10:57:47

17 And Mr. Casey, if you have any problem with that, it's
18 time to let me know now.

19 MR. CASEY: No. In fact, I'm going to reiterate what
20 I said maybe an hour ago: I agree with the Court, and on
21 behalf of my clients, if there's any mission creep we'll come
22 to the Court. But right now we agree that Bob Warshaw and his
23 team, because of the Armendariz material, have the need, as an
24 officer of the Court, to investigate those matters.

10:57:58

25 That's why I wrote him the other day. We welcome his

10:58:16

1 involvement. We welcome the Court's involvement. And we
2 realize we've gotta get some information to you, but that's why
3 we came to your agent is because we understand that's in his
4 purview.

5 THE COURT: Thank you. And I do acknowledge that the
6 information that we've received in this regard has come from
7 the MCSO.

10:58:30

8 Now, Chief Deputy Sheridan, Sheriff Arpaio has
9 indicated he's delegated this responsibility principally to
10 you. Do you have a plan for going forward with the
11 investigation of personnel that may, either by Deputy
12 Armendariz's tapes or by any of the other recordings that you
13 find, be implicated in inappropriate activity?

10:58:47

14 CHIEF DEPUTY SHERIDAN: Yes, sir. On Monday I
15 instructed Captain Holmes, our commander of the
16 Internal Affairs division, to initiate an internal
17 investigation and to put on notice all the members of the Yuma
18 smuggling unit, that's the unit that Deputy Armendariz
19 primarily worked with during the time of -- under the
20 direction -- discretion of this Court, to put them under notice
21 of investigation that we were going to begin this internal
22 investigation.

10:59:07

10:59:32

23 Everyone that was in contact with detective -- Deputy
24 Armendariz will be interviewed, to include their supervisors
25 and their chain of command, because I believe we, the sheriff

10:59:56

1 and I, Captain Holmes, everyone that is in the know about this,
2 share the same concerns the Court does about who knew what,
3 when, and how did this happen? How did things get this far
4 along? And I expressed those concerns with Chief Warshaw
5 yesterday when I briefed him, and I believe even Thursday night
6 when I discussed that with him last week.

11:00:26

7 So we are very concerned about this, and we've been
8 working very closely with the monitor on this issue, because we
9 understand the gravity of this new information.

10 THE COURT: Any questions? Ms. Wang?

11:00:51

11 MS. WANG: Your Honor, I do have some -- some
12 reactions I'd like to share with the Court if we're done with
13 gathering information.

14 THE COURT: Well, let me just say, I'm going to meet
15 with the monitor.

11:01:05

16 Are you going to be here through tomorrow? Or not.

17 CHIEF WARSHAW: I'm scheduled to leave.

18 THE COURT: All right. Well, I'm going to direct the
19 monitor to work with you on a plan that he can approve that's
20 your best thinking about how you can, without resulting in any
21 destruction of evidence, gather all the recordings, and then
22 based on what you find, and/or maybe beginning before you can
23 assess what you find, depending upon your thoughts, you result
24 in an appropriate and thorough investigation.

11:01:22

25 Is there any issue with that?

11:01:40

1 MS. WANG: No, Your Honor, and we appreciate that. I
2 would like to --

3 THE COURT: All right. I just want to hear from
4 Deputy --

5 MS. WANG: Yeah, of course. 11:01:49

6 THE COURT: -- Chief Sheridan first.

7 CHIEF DEPUTY SHERIDAN: I'm sorry, Your Honor. I
8 thought that question was for me.

9 Yes, I've consulted with Chief Warshaw about this and
10 we discussed this issue yesterday. He had some good advice for 11:02:00
11 me Thursday night and yesterday about some of the concerns the
12 Court had, some of his advice from dealing with issues like
13 this -- Chief Martinez, also -- and I took what they had to say
14 and we will incorporate that into how we approach this
15 situation. 11:02:21

16 THE COURT: All right. And for what it's worth, I'm
17 going to say I'm no law enforcement professional. I certainly
18 want to protect you, protect your men in an appropriate way.
19 But I also want to move quickly, especially in terms of
20 gathering evidence. I cannot justify withholding this from the 11:02:34
21 public forever, but I certainly understand the law enforcement
22 need that you have, at least for a reasonable period, to do
23 your best to make sure that you can obtain all the evidence
24 without its destruction.

25 So I will be asking you for reasonable estimates about 11:02:49

1 how long this information needs to be kept under seal, because
2 I don't want to keep it under seal longer than it has to be
3 kept under seal. You understand that.

4 CHIEF DEPUTY SHERIDAN: Yes, sir. Captain Holmes is
5 in the process of writing an investigative plan, and he should
6 be getting that to us rather quickly.

11:03:03

7 THE COURT: All right. Thank you.

8 Ms. Wang.

9 MR. CASEY: Your Honor, three -- may I put three
10 things on the record --

11:03:21

11 THE COURT: You may.

12 MR. CASEY: -- real quick, briefly.

13 I'm going to assume, unless the Court tells me
14 otherwise, that our point of contact -- our, my client MCSO --
15 will be the monitor, Bob Warshaw, and his delegee, and that to
16 the extent the Court wants to have another hearing like this or
17 needs something in writing, filed under seal or whatnot, you'll
18 issue an order directing us to that. Otherwise, we will keep
19 your agent informed. Is that --

11:03:33

20 THE COURT: That's correct.

11:03:47

21 MR. CASEY: Okay. The second thing I wanted to let
22 you know on the record is Cecillia Wang mentioned that she has
23 not had a fair opportunity yet to digest everything, and did
24 not know the purpose of the 10:00 a.m.

25 We are open, and I convey this to the Court and on the

11:04:03

1 record, when they have -- if they come up with other ideas of
2 other areas, we are not going to automatically exclude them
3 because they're coming from Cecillia or the ACLU. We will
4 consider them in good faith. We will be receptive. And if Bob
5 Warshaw or Raul Martinez say, That's a good idea, then it's
6 likely to be adopted by my client.

11:04:22

7 And the third thing I want to just point out, because
8 I heard from my co-counsel, through Captain Holmes, just a
9 matter of clarification on the record so if this is ever
10 unsealed, that Lieutenant Joe Sousa was never seen or observed
11 doing or saying anything inappropriate or unlawful or illegal;
12 that he may have been present during, perhaps, an improper
13 disposition done in his presence by Charley Ramon Armendariz.

11:04:36

14 Did I accurately capture that? Thank you very much.

15 THE COURT: All right. And that is based on the 250
16 tapes that you reviewed so far.

11:05:00

17 CAPTAIN HOLMES: That is correct, Your Honor.

18 THE COURT: All right. I will expect, by the way,
19 updates in terms of who else you may find on those tapes and
20 whatever else you may find, I'll expect the monitor to be
21 providing full updates of that information.

11:05:14

22 MR. CASEY: And that's exactly why I clarified it,
23 because that man to your right, Bob Warshaw, will get it as
24 soon as we have the sense to give it to them. What I mean, as
25 soon as we understand what we've got --

11:05:27

1 THE COURT: All right.

2 MR. CASEY: -- then it will go to him. I think you're
3 looking at a 24 to 48 hours from the moment of discovery. I
4 can't imagine why, unless there's an intervening weekend, why
5 it would take longer. And without waiving anything, that's
6 always been counsels' advice: Sooner is better than later;
7 thorough is better than sloppy.

11:05:38

8 THE COURT: All right. Thank you.

9 Ms. Wang.

10 MS. WANG: Thank you, Your Honor.

11:05:49

11 I have two main points in reaction to what we've heard
12 today. The first is that based on the limited information
13 we've now gotten, it seems quite likely that there were
14 discovery violations in this case. It seems that there were a
15 number of -- quite a volume of recordings and other data that
16 were available before the close of discovery as well as through
17 the time of the trial and the discussions about the remedies in
18 this case that we should have gotten as plaintiffs. I'm
19 concerned about that, particularly in light of the spoliation
20 of evidence which the Court sanctioned MCSO for.

11:06:09

11:06:28

21 Relatedly, Your Honor, I do have concerns that there
22 is no outside agency that is participating in this
23 investigation. After last week's sidebar discussion I did ask
24 Mr. Liddy whether any other agencies would become involved in
25 investigating this matter, and he said no. My understanding

11:06:52

1 was that the initial instigation of the investigation of Deputy
2 Armendariz began with the Phoenix Police Department responding,
3 and so as plaintiffs we have a number of questions about the
4 process that MCSO has undertaken to date and going into the
5 future.

11:07:14

6 For that reason, we would ask that the Court order
7 MCSO to document all steps they've taken to investigate this
8 matter, starting with the instigation of the Armendariz
9 investigation, and that they provide that to the monitor, to
10 the Court, and to the plaintiffs, so that we fully understand
11 what steps were taken.

11:07:34

12 I do have some concerns, I think analogous to the ones
13 that Your Honor expressed, about how best to preserve evidence,
14 and to gather it, and to avoid the possibility of destruction
15 of evidence. Chief Deputy Sheridan indicated that they are
16 about to promulgate a new document retention policy tomorrow.

11:07:52

17 I think that that timing of an announcement of a
18 policy, combined with the notice they've already given to
19 members of the Human Smuggling Unit, combined with the
20 notoriety of what happened with Deputy Armendariz in the past
21 couple of weeks, gives rise to some concerns about that, and so
22 I think that having some clarity about the investigation is all
23 the more important.

11:08:14

24 Finally, Your Honor, I think it's pretty clear already
25 from what we've heard, which is, I'm sure, just the tip of the

11:08:35

1 iceberg, that this new information could certainly affect
2 MCSO's pending appeal of Your Honor's orders to the Ninth
3 Circuit. Just what we've heard today indicates that there were
4 very serious failures in supervision in the complaint process
5 that MCSO has for civilians to record their -- or to register 11:08:58
6 their complaints about deputies with the agency, serious
7 concerns about discipline arise from what we've heard today.
8 All of those things have been addressed in Your Honor's October
9 supplemental injunction, and those are all things that
10 defendants have challenged on appeal. 11:09:21

11 And so the status of the appeal is that the
12 plaintiffs, our answering brief is due to the Ninth Circuit
13 this Friday. And in light of what appears to be some very
14 serious discovery violations, I think we'll need to do some
15 work as plaintiffs to decide whether to take steps in light of 11:09:39
16 the pending appeal, and we'll be happy to meet and confer with
17 the defense counsel about that.

18 THE COURT: All right. If you'll hold there, I have a
19 few questions for you.

20 Would it be your suggestion that the MCSO not 11:09:55
21 promulgate its new document retention policy?

22 MS. WANG: I would want, frankly, to hear the
23 monitor's thoughts about that as a law enforcement -- with his
24 law enforcement expertise. I do have concerns just as a matter
25 of common sense. That may be mitigated by the fact that 11:10:14

1 they've already sent out notice to HSU members that this
2 investigation is ongoing, I'm not sure it makes a difference at
3 this point, but that raised a red flag for me.

4 THE COURT: Yeah. Do you have any concerns consulting
5 with the sheriff and/or with the plaintiffs about how they 11:10:32
6 proceed to best obtain the material that we're talking about,
7 Chief?

8 CHIEF WARSHAW: I have no concerns, Your Honor, but I
9 do think it would be instructive, because if I understood
10 Chief Deputy Sheridan's representation to the Court, he said 11:10:50
11 that the preference would be for the agency to gather this
12 information in a soft -- in a soft way, and I think as long as
13 we're in session here with you now, Judge, I would like some
14 clarity on that.

15 Clearly, as it pertains to the digital recording 11:11:08
16 devices that they have acknowledged was in fact -- were in fact
17 purchased by the County, in our interactions with the command
18 of two districts, it was very clear that there has been no
19 policy on that, so I would not be familiar with any retention
20 of those documents, since one district commander made it all 11:11:32
21 too clear that deputies were free and clear to delete anything
22 that was either exculpatory or inculpatory. There were
23 basically no governing rules.

24 But to the point of Ms. Wang's question, instead of a
25 single silo regarding a retention policy, I'd like to have the 11:11:54

1 opportunity to speak with MCSO more specifically, so I could
2 ultimately advise the Court on your question, understanding it
3 in context. So I'm just going to hold in abeyance any views I
4 have about the -- about the publishing of any retention policy
5 until I've had a few minutes with the MCSO.

11:12:22

6 THE COURT: Any objection to that?

7 MS. WANG: No, Your Honor.

8 THE COURT: Is there any objection that the MCSO wants
9 to set forth to providing a written report as to all of the
10 steps that have been taken with respect to the Armendariz
11 investigation to date?

11:12:35

12 MR. CASEY: Your Honor, I have just been advised that
13 state law requires HSU to be notified that there is an
14 investigation by Internal Affairs; that state law also requires
15 a certain level of confidentiality.

11:12:57

16 As a matter of principle, we don't object to reporting
17 to the Court under seal, to the monitor under seal, to the
18 plaintiffs under seal, so long as we can also do it consistent
19 with Arizona law, which I'm sure there is a way we need to do.
20 We can do that.

11:13:15

21 THE COURT: All right. Then I'm going to order you to
22 do that.

23 MR. CASEY: And that would be to the Court. To the
24 monitor --

25 THE COURT: It would be to the Court, with copies to

11:13:21

1 the monitor and the plaintiff.

2 MR. CASEY: And under seal.

3 THE COURT: Under seal.

4 MR. CASEY: Yes, sir.

5 THE COURT: And let me just note that either party can 11:13:26
6 have access to this hearing and its transcript without further
7 order of the Court. However, this transcript, this hearing is
8 under seal, and so is the transcript. It is not to be
9 disclosed until further order of the Court. All right?

10 MS. WANG: Your Honor, one clarification on that. 11:13:46

11 Obviously, we're all aware of the pending Justice
12 Department litigation before another judge in this district. I
13 just wanted to know whether they've been apprised of these
14 developments.

15 MR. CASEY: I can tell you that counsel for the 11:14:01
16 sheriff in the DOJ case was present with us on Monday. They
17 are separately represented by the Jones, Skelton law firm. I
18 don't know what they've done, but I know that they've got a lot
19 to do, so I can't tell you what representations are.

20 I can tell you, however, it is my position, I will 11:14:23
21 work with Cecillia Wang on this, but it's our position, even
22 though they have a -- I think you guys have some sort of
23 sharing agreement or cooperation agreement with the DOJ Civil
24 Rights Division, but that you cannot share -- it's our position
25 as defendants you cannot share this conversation with DOJ until 11:14:40

1 we clear it with our, you know, compatriots over at the Jones,
2 Skelton law firm and then get back with you. Otherwise,
3 there's no purpose for having confidentiality in this hearing.

4 But we will work with the plaintiffs, and this is
5 not -- so it's clear for the plaintiffs and clear for the 11:14:58
6 Court, we're not trying to compartmentalize this and use the
7 protective order seal of the Court to accomplish any nefarious
8 activity in one litigation or game the system there. That's
9 not happening. So we'll work with you, but we can't agree at
10 this point for you to go call, pursuant to a cooperation 11:15:17
11 agreement, call the DOJ and share this with them yet.

12 THE COURT: Any concern about that, Ms. Wang?

13 MS. WANG: No, Your Honor.

14 THE COURT: All right. It is my understanding that
15 regardless of whatever agreement you have with the Department 11:15:31
16 of Justice, this suit is this suit. The confidentiality order
17 and the seal applies to this suit and it applies to you, and
18 you cannot share this information with the Department of
19 Justice unless and until I authorize you to do so.

20 That being said, I do not intend, as I've already 11:15:48
21 indicated, to keep this matter under seal any longer than it
22 has to be kept under seal, so I expect both parties to keep me
23 apprised as to their position with respect to that.

24 MS. WANG: Understood.

25 THE COURT: Have I taken care of all of your concerns? 11:16:01

1 MS. WANG: Yes, Your Honor, other than the pending
2 issue with the -- the retention policy being promulgated.

3 THE COURT: All right. And that, the monitor will
4 consult with both of you after this hearing.

5 I do recognize, Ms. Wang, for what it's worth, that 11:16:16
6 this information does seem to implicate whether or not
7 disclosure was fully made to the plaintiffs in this action it
8 may have further ramifications for this lawsuit, but it is, of
9 course, at this time premature to speculate about what, if any,
10 such implications there may be. 11:16:38

11 To the extent that you might reasonably seek an
12 extension in the time to respond in the Ninth Circuit, that is
13 a matter over which I have no jurisdiction. It would seem to
14 me, and I would just offer on the record, that it would be
15 incumbent upon defendants to offer you an extension of time, 11:16:52
16 just as I expect that they are not going to commit perjury in
17 any other lawsuit because of what they've talked about today,
18 and they may well want to give you an extension of time for
19 them to be able to get an arm -- their arms around what you
20 also want to get your arms around, but I will leave that to 11:17:14
21 you, Mr. Casey.

22 MR. CASEY: Your Honor, Eileen GilBride at
23 Jones, Skelton is lead appellate counsel, but I'll represent to
24 plaintiff that if she will contact Eileen and I, they will have
25 an extension. Whatever we can get from the Ninth Circuit we 11:17:26

1 will give it to the plaintiffs, because that is in the best
2 interest of all the parties and the proverbial the interest to
3 the justice system, so that will happen.

4 MS. WANG: Well, I'll consult with the rest of our
5 plaintiffs' counsel team. I don't know whether we will or will 11:17:39
6 not seek an extension of time on the answering brief, but we'll
7 consult with defense counsel about next steps in the Ninth
8 Circuit case.

9 THE COURT: All right. I will say that I had intended
10 to finally take up the matter of attorneys' fees, which has 11:17:52
11 been fully briefed, in the matter next week, but I may defer
12 that, pending my determination as to whether or not that time
13 period needs to be extended or otherwise revisited.

14 How long is your tape that you had to show us?

15 (Pause in proceedings.) 11:18:23

16 MS. WANG: Your Honor, do you intend to have a hearing
17 on the fee motion?

18 THE COURT: Well, would you like one?

19 MS. WANG: Yes.

20 THE COURT: I'll tell you what: After I have my arms 11:18:34
21 around it, I'll determine whether I want a hearing or not.
22 I'll take into account that you've requested one.

23 MS. WANG: All right, Your Honor. Thank you.

24 THE COURT: Um-hum.

25 MR. CASEY: Your Honor, there are two that I remember 11:18:46

1 pretty clearly. One is very -- very short. It might be less
2 than five minutes. It's the pull-over with the woman driver.

3 Okay, you say 10 minutes.

4 And then there's another one that we watched that's
5 problematic that's quite lengthy, but you can get a flavor. 11:19:04
6 It's maybe 20, 25 minutes, maybe longer, but you're going to
7 get a flavor of what's going on there within the first 10.

8 THE COURT: All right. Why don't you spin them up,
9 please.

10 MR. CASEY: Okay. And I ask the Court's indulgence. 11:19:15

11 Sir, what is your name? I apologize.

12 SERGEANT BENTZEL: Sergeant Jason Bentzel.

13 MR. CASEY: Okay. And who do I need to give this CD
14 to?

15 THE CLERK: Oh, I thought you were going to play it on 11:19:25
16 your own --

17 MR. CASEY: Do you have a D -- do you have a computer?
18 I apologize.

19 (Off-the-record discussion between the Court and the
20 clerk.) 11:19:42

21 MR. CASEY: Would you like to take a quick break, Your
22 Honor? Five minutes?

23 THE COURT: All right. We'll take a five-minute break
24 while you set that up.

25 MR. CASEY: Thank you, Your Honor. 11:19:48

1 (Recess taken.)

2 THE COURT: Please be seated.

3 MR. CASEY: Your Honor, the first, with the Court's
4 permission, Ken Holmes, we have queued up the video. Before we
5 start, I'd like to have Ken Holmes, in 10 seconds or so, give
6 you his general understanding of orientating you on this
7 particular video that you're going to see.

11:30:35

8 CAPTAIN HOLMES: Thank you, Your Honor.

9 This is typical of some of the five or six that we
10 noted out of the 250, 'cause most of which appear to be good
11 traffic stops.

11:30:54

12 This is a stop, we don't know how it was -- we don't
13 know what the reason was for the stop. We're picking it up
14 right here after the stop has already occurred. He's
15 approaching a couple of middle-aged individuals.

11:31:13

16 And one other thing I want to mention, the date stamp,
17 we're not sure if that's accurate. Clearly, it isn't the, you
18 know, 0040 hours. That would be something a little after
19 midnight, and we can see that it's daylight. So the date and
20 the time --

11:31:31

21 THE COURT: The date would be February 25th, 2010, if
22 accurate?

23 CAPTAIN HOLMES: We don't know for certain.

24 THE COURT: All right. And it looks to me like this
25 would be an eyeglass cam?

11:31:41

1 CAPTAIN HOLMES: That is correct, yes.

2 THE COURT: Okay.

3 (Video clip played.)

4 MR. CASEY: Stop the video.

5 (Video clip paused.)

11:36:19

6 THE COURT: I saw it. Were you --

7 MR. CASEY: Okay.

8 THE COURT: -- trying to point out the dash camera?

9 MR. CASEY: Yeah. I just wanted to point out for the

10 Court and for the plaintiffs that if this is in 2010, that

11:36:24

11 appeared to us to be a dash cam.

12 MS. WANG: Uh-huh.

13 MR. CASEY: Okay. And I just wanted the Court to be

14 aware of that.

15 THE COURT: Thank you.

11:36:32

16 (Video clip played, then paused.)

17 MR. CASEY: Your Honor, I just wanted to point out

18 what is on the lower portion of this screen right here at the

19 4552 mark is what we understand to be the mobile computer --

20 MDC?

11:38:35

21 CAPTAIN HOLMES: Mobile data computer.

22 MR. CASEY: Mobile data computer. Just that's what

23 that is. That was what was mentioned that the board authorized

24 in 2005 and went back in in '07, so --

25 Please continue.

11:38:47

1 (Video clip played, then paused.)

2 MR. CASEY: Okay. Just queue it up for the next one.

3 That would be --

4 Your Honor, basically, what happens, the rest of it is

5 he ends up, you know, releasing-citing him.

11:42:04

6 The next video that we'd like to share with you is a

7 much longer one, and I don't -- it's entirely up to the Court

8 and the parties, but it's essentially a traffic stop that turns

9 into a debate match -- I'm going to put this diplomatically,

10 because it's on the record, it may be unsealed -- it turns into 11:42:23

11 a debate match, into a "You're going to be arrested," and

12 ultimately ends up 40 minutes, or whatever time it is later, a

13 cite and release.

14 I think that's the most -- probably the most it's

15 appropriate for me to say at this, but it's been designated 11:42:41

16 internally at the MCSO as problematic.

17 THE COURT: All right.

18 MR. CASEY: So that would be the Jacobs, Part 1, and

19 let's start that, please.

20 THE COURT: Just before you start it, have you 11:42:51

21 identified --

22 (Video clip played momentarily, then paused.)

23 MR. CASEY: Please stop that. I'm sorry?

24 THE COURT: Have you identified the two persons that

25 we just viewed be detained?

11:42:56

1 MR. CASEY: Captain Holmes?

2 CAPTAIN HOLMES: Not at this time, no.

3 THE COURT: All right. Thank you.

4 MR. CASEY: And the other thing, I'd like to just

5 point out on this why we're queueing this up. This is dated, 11:43:09

6 obviously, just almost a year ago, and we don't know the

7 accuracy of this, either. I will represent to the Court when

8 we watch this it does have the computer dash, as you can see

9 this, in the car. Excuse me. It does have the MDS in there,

10 and also there is also the dash cam that we also observed. 11:43:27

11 And you can see that this seems to be indicating

12 5:06 p.m., which, since we're already in May, we know that at

13 5:06 the ambient light conditions are different than this.

14 This is very dark. And during the course of the extended stop

15 there's actually a discussion about, What the heck are you 11:43:48

16 doing out at 2:00 a.m.? So it appears that that's not a

17 correct time, although the date may be correct.

18 So if you would please start it. Thank you, Your

19 Honor.

20 (Video clip played, then paused.) 11:50:17

21 MR. CASEY: Your Honor, next basically he's -- Charley

22 Armendariz' voice, as I recognize it, instructs the witness

23 basically to be quiet. Then there's an exchange. He takes him

24 outside. There's more debating where it appears that

25 Armendariz is exercising his authority. And it goes back and 11:50:31

1 forth, and the guy, as I understand it, is cited and released.

2 Is that accurate --

3 CAPTAIN HOLMES: That's correct.

4 MR. CASEY: -- Captain Holmes?

5 CAPTAIN HOLMES: Yes.

11:50:43

6 THE COURT: How long does the stop -- what's the
7 duration of the stop?

8 CAPTAIN HOLMES: My best recollection, it was about 25
9 minutes.

10 MR. CASEY: We can watch all of it, Your Honor, but I
11 just -- as a courtesy, I just wanted to let you know it's --

11:50:53

12 THE COURT: I appreciate that.

13 Is there anything more you want to see, Chief?

14 CHIEF WARSHAW: No, sir.

15 THE COURT: Anything more you want to see --

11:51:04

16 MS. WANG: No, Your Honor.

17 THE COURT: -- Ms. Wang?

18 I assume -- I guess I'm not going to assume. I'm
19 going to order, and I think I already have, that all these
20 materials be made available to the monitor, and you've
21 indicated that you're going to give full compliance.

11:51:12

22 Let me just say -- make a few observations. I do
23 appreciate the MCSO coming forward with this information
24 voluntarily. I'm sure it's very embarrassing to them as an
25 organization and it does cause me grave concern.

11:51:26

1 As a result, however, I am going to say that to the
2 extent that the MCSO is going to undertake this investigation
3 on its own, and if the plaintiff is going to take the position
4 that I have the authority, somehow, to remove the MCSO from
5 this investigation, I guess I'd invite you to submit that 11:51:46
6 authority, but I'm not sure that I have it. But to the extent
7 that the MCSO is going to pursue this investigation on its own,
8 I do believe that I am extremely interested in my monitor being
9 proscriptive and involved.

10 To the extent that the MCSO wants to reject 11:52:03
11 suggestions made by my monitor, I'm going to direct the monitor
12 to tell me that they've rejected those suggestions, and why,
13 and I'll let you explain that. But it seems to me that in
14 light of the potential conflicts of interest -- and I'm not
15 trying to suggest that you haven't been as honorable as 11:52:18
16 possible, given the information that you have -- it's very
17 important that there be very close observation.

18 We've just had a session with Sandi Miller at which
19 you were present. It seems to me --

20 MR. CASEY: Sandy Wilson? 11:52:35

21 THE COURT: I'm sorry, yes, I said Sandi Miller. Yes,
22 Sandi Wilson, at which you were present. It seems to me that
23 the nature of the task involved here in monitoring this
24 investigation alone, which could be extremely far reaching, is
25 going to involve a great deal of resources from the monitor. 11:52:47

1 And I don't know, Mr. Liddy, if you want to advise --
2 or if any party's going to object if you advise your folks at
3 MCAO that any cap is probably going to be a ridiculous thought
4 here. And in any case, I don't -- I don't know what the cap
5 is, maybe that's a little bit of a rash statement, but in any
6 case, this is going to involve substantial additional
7 responsibility by the monitor, and I just want to make that
8 clear and placed on the record.

11:53:15

9 I do recall as I observed the videotape -- and I do
10 again thank you for bringing it forward, and the disclosure of
11 it -- that one of the things on which I didn't make findings,
12 because I didn't have sufficient evidence, involved a stop by
13 Deputy Armendariz against the named plaintiffs in this case,
14 and I believe that the allegations do relate to what I may have
15 just seen, and so I take Ms. Wang's suggestion that there in
16 fact may be additional matters that are required for this case.

11:53:32

11:53:49

17 But of course, I do recognize that that is only a
18 possibility and at this point is very premature. We need to
19 get our arms around everything that I'm sure the MCSO is going
20 to want to get their arms around as much as I do, and to the
21 extent that there's any question about that, I'm going to
22 require the monitor to inform any concerns he has that the MCSO
23 is not fully and completely cooperating in an independent and
24 thorough investigation of all of this would give rise to.

11:54:14

25 Anything else you'd like to say, Mr. Casey?

11:54:35

1 MR. CASEY: Yes, I'd like to address your order, your
2 direction. I looked over at Chief Sheridan when you said the
3 monitor is to be involved; the monitor is to have input; the
4 monitor is to give advise, recommendation.

5 I understand that I received an affirmative nod that 11:54:50
6 that was agreeable, is that correct, sir?

7 CHIEF DEPUTY SHERIDAN: Yes, it is.

8 MR. CASEY: Okay. I want to make sure I'm
9 understanding what my client is telling me, because I want to
10 represent to you, in answer to your question, that that will be 11:55:02
11 done. It's on the record. It's in front of the Court. My
12 client is agreeable to having the monitor's involvement in
13 doing that. Again, if there's any issues, hopefully we're
14 going to resolve them as adults. If there are any big
15 difficulties, then we'll be back in front of you. 11:55:19

16 The second thing I wish to address to you as a matter
17 of candor is that Mr. Liddy and I have talked about the very
18 issue that you addressed, the Meraz-Nieto stop, and in candor I
19 talked to Dan Pochoda and Cecillia Wang before they saw the
20 videotape. And when I saw that last -- that first episode, 11:55:37
21 something popped in my mind.

22 What effect it's going to have on any of your
23 evidentiary rulings is unknown. But what's important about
24 this is what we need to do, and that's gather information, as
25 embarrassing as it is, is to find out what's out there. 11:55:53

1 I do want to point out for the Court that this is --
2 just be mindful, because my just is an advocate. We have the
3 truth to seek here and we're going to do that. But as an
4 advocate, I also wanted to point out that we have one deputy
5 who obviously was in a dark place mentally, spiritually,
6 otherwise, that ended up in a desperate act of taking his own
7 life. The toxicology report will soon be made available, I
8 think to whomever, but my understanding is that the deputy had
9 in his system methamphetamine and cocaine. They were unable to
10 test for mind -- like LSD.

11:56:17

11:56:46

11 It is our hope that what we have here is a rogue
12 person. That's what we hope. But I can tell you that the
13 sheriff and his chief are absolutely committing to seeing the
14 truth out, whatever it may be, and holding any and all persons
15 responsible, whatever might be the outcome. It's our hope that
16 it's a rogue, it's an outlier. But whatever it is it's going
17 to be, and we're going to find out, and the Court's going to
18 find out and the monitor's going to find out.

11:57:08

19 And this is a very good thing for the community, it's
20 a good thing for this office, and the Court needs to
21 understand, to the extent that it's appropriate for me to say
22 that, that that is shared by these folks. That's why we came
23 to you. It's not a matter of telling you we've got a problem
24 so you can be easy on us; it's a matter that we've got an issue
25 and we need to solve it, and we know that more minds are better

11:57:29

11:57:45

1 than a single mind on the issue. With that, I thank you for
2 the Court's time.

3 THE COURT: Thank you. I'm going to make one other
4 observation that may not be really truly related to what we do
5 under seal, and I may say it in public, but I think it bears 11:57:58
6 being said so that nobody will misunderstand and misunderstand
7 that I am punishing them when I'm not punishing them.

8 We have had a request, and we need to -- we need to
9 proceed with the rest of the implementation, to the extent we
10 can, of my order, and that involves training; it involves 11:58:16
11 instruction; it involves approval of curriculum; it involves
12 other matters.

13 Now, one of the things that we're involved here is
14 with the approval of training, and Mr. Liddy, you raised with
15 me last time whether you would be an appropriate trainer. And 11:58:33
16 after that hearing was over, I'm going to tell you, I did watch
17 the news that night. I watched you in your interview.

18 And what you did was, I think, completely appropriate.
19 You did what a lawyer should do, and that is you represented
20 and defended your client, and you did it on television, and 11:58:51
21 that is your job to do. And in that process, you represented
22 that some of the things he said in his solicitation brochure
23 did not violate the Court's order, something to that effect as
24 I recall the interview. I understand that. I understand that
25 that was a complete and appropriate fulfillment of your role, 11:59:13

1 and in fact it may be the appropriate position to take.

2 But it makes me think, in light of the fact that there
3 have been statements, and I've indicated that the sheriff can
4 make these statements in public and represent his department
5 however he wishes to the public, that allowing you, or 11:59:28
6 requiring you to represent the sheriff does not make you
7 somebody who I think is appropriate to involve as an instructor
8 in the course.

9 Similarly, I'm going to find the same as to Chief
10 MacIntyre. He may be a great police officer, and he may, in 11:59:47
11 other settings, be wonderful for training. But if he is going
12 to take the position -- and again, I'm not saying it's an
13 inappropriate position -- if he's going to take the lead
14 position in saying that the sheriff's department hasn't
15 racially profiled here, I think it's important that the 12:00:04
16 officers, and the instruction that we give the officers, not be
17 involved in that kind of a question.

18 So it isn't that I think he's an inappropriate
19 instructor in general or that I doubt his qualifications or
20 bona fides, but I'm not going to be approving him as somebody 12:00:19
21 to be giving that instruction. I want somebody who is neutral,
22 and I think it is especially underlined and important while the
23 MCSO is undergoing this investigation that relates so closely
24 to the instruction.

25 I've indicated today that Mr. Irish has to be walled 12:00:37

1 off from the sheriff's -- from Sandi Wilson, and that all the
2 rest of you do, too. And that may well be my position with
3 respect to providing training and instruction for the reasons
4 that I have just stated.

5 That being said, I do appreciate what you've said, 12:00:55
6 Mr. Casey, and I expect that you know that I will hold you to
7 it. And I believe that in doing so, I'm doing you and your
8 clients as much of a favor as I am the plaintiffs, because
9 whatever the truth is here, it has to come out. And it may
10 well be that it is one rogue police officer, but if it is not, 12:01:13
11 we need to make every effort to assure the public that it is
12 not, and that the investigation has been as thorough as it
13 could possibly be under the circumstances and as intelligent,
14 and that is what I intend to implement.

15 And I appreciate the sheriff's avowal that that will 12:01:34
16 be the case, the chief deputy's avowal that that will be the
17 case, and that all in their department who have any role with
18 this will make it the case and will not be dealing to the
19 department's self-interest, to my self-interest, to the
20 plaintiffs' self-interest, or anybody else's self-interest, but 12:01:49
21 to uncovering the truth.

22 Is there anything else that needs to be said?

23 MS. WANG: Your Honor, briefly, two points.

24 First, we also objected to Chief Deputy Sheridan
25 serving as a trainer. Does the Court have a ruling on that? 12:02:03

1 THE COURT: Again, Chief Deputy Sheridan, I am not
2 prohibiting you from training and other exercises, nor do I
3 mean to suggest to you that I disapprove of your activity. But
4 I believe that under the circumstances in which you publicly
5 declined to sign the corrective statement -- and again, that's
6 your right. I'm not going to make you sign the corrective
7 statement. That would have made life a lot easier in terms of
8 my view of you correcting yourself in front of your officers so
9 there wouldn't be any question about your providing unbiased
10 teaching.

12:02:22

12:02:42

11 And so we went through the corrective step. I do
12 acknowledge, and I did last week, that you undertook all of
13 those steps that I asked you to. I'll do it again. But I just
14 don't see any need, in this -- in this training where the
15 training has to be unbiased and correct, and have the
16 appearance of impropriety, I just think it's more appropriate
17 that you pursue the investigation you're pursuing now, and so I
18 am not going to approve Chief Sheridan as an instructor.

12:02:58

19 Again, not -- I intend nothing personally about your
20 integrity or anything else, sir, like I don't try to impugn
21 Mr. Liddy's integrity or Mr. Irish's integrity. But you're all
22 doing the job that you have to do as a party in this lawsuit,
23 as well as a participant in trying to find the truth, and I'm
24 just going to seal you off from any perceived conflicts in
25 those roles. That's why.

12:03:17

12:03:35

1 Anything else?

2 MS. WANG: The final point, Your Honor, is we
3 appreciate defendants' candor in coming forward with this
4 information and clueing us as plaintiffs into it. I do have a
5 reaction to Mr. Casey's comments.

12:03:49

6 I think it's understandable that defense counsel hopes
7 that Deputy Armendariz was a rogue officer and that the problem
8 is limited to him. Just based on what we've seen today, which
9 was limited, that does not appear to me to be the case. There
10 are at a minimum very serious problems with supervision, with
11 MCSO's complaint process, and those things are true even if no
12 other deputies were engaged in this sort of conduct, and that's
13 something that we don't know yet.

12:04:09

14 I think it's critical for MCSO, currently as the sole
15 investigating agency, not to go into the investigation with a
16 presupposition about the outcome or a desired outcome, but
17 approach that investigation with an open mind to wherever it
18 may lead.

12:04:30

19 THE COURT: I do agree, but I also agree that it's
20 appropriate for Mr. Casey, as an advocate for the MCSO, to
21 present the most favorable possibility for the MCSO, just as it
22 is appropriate for you, as an advocate for the plaintiffs, to
23 present the least favorable possibility for the MCSO. And
24 fortunately, we're going to find the facts, and we will let the
25 facts make the determination here.

12:04:48

12:05:09

1 Thank you all for your participation this morning. I
2 do remind everyone here, especially my friends at the marshal's
3 office, even though I have complete confidence in you, this is
4 not something to be discussed with your colleagues or anyone
5 else. And that goes, of course, for anybody else in this
6 courtroom. It will not be discussed until I enter an order
7 allowing this material to be removed from seal.

12:05:26

8 Thank you.

9 MR. CASEY: Thank you.

10 (Proceedings concluded at 12:05 p.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