

1 Timothy J. Casey (#013492)  
James L. Williams (#026402)  
2 SCHMITT SCHNECK SMYTH CASEY & EVEN, P.C.  
1221 East Osborn Road, Suite 105  
3 Phoenix, AZ 85014-5540  
Telephone: (602) 277-7000  
4 Facsimile: (602) 277-8663  
[timcasey@azbarristers.com](mailto:timcasey@azbarristers.com)  
5 Counsel for Defendants Joseph M. Arpaio and  
the Maricopa County Sheriff's Office

6 Thomas P. Liddy (#019384)  
7 MARICOPA COUNTY ATTORNEY'S OFFICE  
Civil Services Division  
8 222 N. Central, Suite 1100  
Phoenix, Arizona 85004  
9 602-506-8066  
10 Co-counsel for Defendants Joseph M. Arpaio and  
the Maricopa County Sheriff's Office

11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**

13 Manuel de Jesus Ortega Melendres, et al.,  
14  
Plaintiffs,  
15 vs.  
16 Joseph M. Arpaio, et al.,  
17 Defendants.

No. CV 07-02513-PHX-GMS

**DEFENDANTS' RESPONSE BRIEF  
REGARDING MONITOR'S  
SEPTEMBER 28, 2014 UPDATE AND  
ASSESSMENT OF MCSO'S  
ARMENDARIZ AND  
RELATED INVESTIGATIONS**

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19  
20 Defendants Joseph M. Arpaio and the Maricopa County Sheriff's Office ("MCSO")  
21 (collectively, "Defendants") respectfully submit this response to the Monitor's September  
22 28, 2014 Update and Assessment of MCSO's Armendariz and Related Investigations (the  
23 "Monitor's Update").

24 **I. Introduction**

25 For the Monitor's efforts to best serve the Court, it is essential that accurate and  
26 complete information be presented. Any failure to provide a full and accurate depiction of  
27 the MCSO's many efforts and accomplishments will inevitably lead to delays and wasted  
28 expenditures along the way to the all the parties' common goal – full and effective

1 compliance with the Court's orders.

2 The Monitor's Update ignores the substantial progress made in these Armendariz-  
3 related investigations and contains countless misstatements and inaccuracies, only the most  
4 important of which are addressed herein, namely:

5 (1) the Monitor's confusion and/or conflation of the nature of *administrative* versus  
6 *criminal* investigations and resulting suggestion that the MCSO use "coercive"  
7 powers/pressure in violation of state law, and

8 (2) the Monitor's inaccurate tracking of information and documents previously  
9 provided by MCSO, resulting in repeated, counter-productive requests for such information.

10 The Monitor has had constant and intimate involvement with the MCSO Professional  
11 Standards Bureau ("PSB") and the investigations at issue. Moreover, the Monitor has  
12 continually complimented PSB for its accomplishments in these investigations, especially  
13 since Captain Steve Bailey assumed command of PSB in early June. Commander John  
14 Girvin, Deputy Monitor, has stated to the MCSO that the difference in the investigative  
15 effort under Captain Bailey's direction is "night and day."

16 However, the Monitor's Update provides no such positive assessment regarding the  
17 progress that has been made by the MCSO or the leadership and direction that has been  
18 provided by Captain Bailey. Instead, focusing on a number of alleged "missteps and  
19 questionable decisions" that largely pre-date the change in command (and in many cases the  
20 Monitor's last report to which the Monitor's September 28 report purports to be an update),  
21 the Monitor insinuates that PSB is pursuing its investigations neither aggressively, nor in  
22 good faith.

23 Nothing could be further from the truth. Within days of assuming his new  
24 assignment, Captain Bailey assigned a new case agent and enlisted the support of numerous  
25 detectives from the Special Investigations Division ("SID") to vigorously pursue all  
26 investigative leads. Over 8,900 video clips have been recovered, reviewed and initially  
27 assessed for potentially problematic conduct. Over 400 video clips have been sent for  
28 secondary review by lieutenants to assess potential problems and identify them with  
specificity. More than 1650 items of evidence have been recovered, researched and, where

1 possible, linked to related videos. Background investigations of the potentially problematic  
2 videos have already generated 39 internal investigations, four (4) notifications to the  
3 Maricopa County Attorney's Office ("MCAO") to address pending criminal matters, and  
4 several areas that will require further training of MCSO deputies in specific areas of law  
5 enforcement.

6 If PSB or the MCSO was simply trying to reach "paper compliance" with the Court's  
7 orders, as the Monitor unfairly alleges, this voluminous undertaking would not have been  
8 made. Countless employee hours have been spent on these investigations by MCSO  
9 personnel, including the recovery, cataloging, and review of all items of evidence, the  
10 identification of all possible criminal or civil misconduct, and the research to conduct  
11 thorough and complete follow up into the history of Deputy Ramon "Charley" Armendariz  
12 ("Armendariz"). If the MCSO did not intend to "fully, fairly and expeditiously investigate  
13 and resolve... employee misconduct investigations," as recommended by the Monitor on  
14 page 40 of the Monitor's Update, PSB would not have gone to the great lengths necessary to  
15 recover and review for potential misconduct 190 discs of unreadable video files by a separate  
16 screen capture process that took five full-time detectives nearly five full weeks to duplicate  
in a frame-by-frame manner.

17 One of the "flawed" approaches the Monitor criticizes at length is the video collection  
18 survey that the Monitor states was hastily designed and failed to capture the Court-ordered  
19 information. The survey actually mirrored all relevant provisions of the Court's Order.

20 The Monitor criticizes the MCSO for not engaging in "coercive" investigative tactics  
21 and rejecting the Monitor's recommendation to conduct administrative interviews in parking  
22 lots to gain "the element of surprise," even though such tactics are prohibited by Arizona  
23 law. When the MCSO has informed the Monitor of these limitations imposed by Arizona  
24 law, the MCSO and its counsel have been criticized for "resisting" the Monitor's efforts.  
25 The MCSO and the PSB have made every effort to comply with "recommendations" of the  
26 Monitor, but Defendants must perform their duties in accordance with the law.

27 It is the purpose of this Response to supply with the Court with the additional  
28 information, clarifications, and corrections necessary to fairly evaluate the MCSO's efforts.

## II. Administrative and Criminal Investigations

A *criminal* investigation seeks information regarding potential violations of state and/or federal criminal laws; suspects and interviewees must be granted all appropriate protections afforded by the U.S. Constitution. In contrast, an *administrative* investigation seeks information regarding potential violations of civil laws and/or agency policy(ies); such investigations of law enforcement officers must also comply with all statutory requirements provided in A.R.S. §38-1101, et seq. Statements made by officers during an administrative investigation are compelled and cannot be used against them in a criminal prosecution. *Garrity v. New Jersey*, 385 U.S. 493 (1967). This legal and investigatory distinction is crucial in assessing the Monitor's critique of PSB's investigations.

What is commonly referred to as the Law Enforcement Officers Bill of Rights confers upon law enforcement officers certain rights with respect to interviews during *administrative* investigations by their employers, including **pre-interview written notice** informing the officer of the **alleged facts** that are the basis of the investigation, the **specific nature of the investigation**, the **officer's status in the investigation**, **all known allegations of misconduct that are the reason for the interview**, **pre-interview copies of all complaints that contain the alleged facts** that are reasonably available, and the officer's right to have a representative present at the interview. A.R.S. § 38-1101(A).

These procedures expressly require full disclosure in advance of all the facts and allegations to the officer being investigated. In direct contrast to these requirements, the Monitor team stressed that the approach to gathering the audio/video recordings required by the Court should preserve the "**element of surprise**." For example, the Monitor stressed, as advocated in the Monitor's Update, that the "**coercive**" powers of PSB should have been used to gather all audio and video (not just that relating to traffic stops) ever taken by any MCSO deputies or posse members. The Monitor's position reflects a clear misunderstanding of Arizona state law, despite the MCSO's many (and continuing) efforts to clarify the legal requirements. If a law enforcement officer is going to be questioned in an administrative investigation, he/she must be afforded all statutory rights associated with his employment. See A.R.S. §38-1101, et seq.

1           A.     Audio/Video Recording Collection was properly (and legally) handled.

2           The MCSO has, and will continue to, “resist” the Monitor’s recommendation that MCSO  
3 ambush its own deputies in violation of their due process rights, with respect to video  
4 collection or otherwise. This legal requirement was discussed extensively with the Monitor  
5 at the inception of the investigation on May 15 during the meeting with Chief Deputy  
6 Sheridan, MCAO attorney Christine Stutz, and Captain Ken Holmes, then head of PSB.  
7 MCSO was resistant to the Monitor’s suggestion that deputies should be approached by PSB  
8 investigators, without notice or warning, in the parking lot on the way into work and  
9 questioned about their use and preservation of audio/video recordings in violation of their  
10 statutory rights. Attorney Christine Stutz stated her disagreement with the Monitor’s  
11 suggested approach,<sup>1</sup> and the Monitor ultimately acquiesced to a slightly less invasive  
12 approach of allowing PSB to gather the information as an audit-type process. It was this  
13 approach that Chief Deputy Sheridan ultimately agreed would be used, having forgotten his  
14 directive hours before to Chief David Trombi to take immediate action to gather the  
15 information through the chain of command. It was agreed that only after a potential policy  
16 violation was established would personnel be interviewed consistent with A.R.S. §38-1101.  
Again, this was not resistance by MCSO, but a requirement of the law.

17           The Monitor Update misstates that the survey directive regarding recording devices was  
18 “voluntary” and posits the “belief” that the survey process “failed to produce an accurate  
19 accounting of recording devices that were in use throughout the period in question, as well as  
20 the total number of actual recordings.” The Monitor’s “belief” is unfounded. The MCSO  
21 has collected over 2,000 videos from the surveys, over 2,000 videos from the HSU, and over  
22 4,000 videos from former Deputy Armendariz, nearly 9,000 videos in all. The MCSO chain  
23 of command directed deputies to provide all such data to PSB under threat of disciplinary  
24 action. This was not a “voluntary” survey, as the Monitor continually alleges. It was a

25           <sup>1</sup> Ms. Stutz also disputed the Monitor’s suggestion that the failure to preserve videos in the  
26 past constitutes a sufficient basis for an administrative investigation because it is undisputed  
27 that MCSO lacked policies and procedures about the use of recording devices and, therefore,  
28 could not allege misconduct by deputies for failing to impound videos in the past unless the  
videos otherwise held evidentiary value.

1 directive from the MCSO chain of command that required all personnel affected to respond.

2 The Monitor has been advised since June 13, 2014 that all sworn, compensated  
 3 personnel<sup>2</sup> responded to this survey directive. The Monitor criticizes MCSO for failing to  
 4 receive all of the responses by the initially set deadline of May 21, 2014, but fails to note  
 5 that, when Chief Deputy Sheridan was advised that not all responses had been received, he  
 6 ordered Chief Trombi to issue a second directive that would hold an employee's entire chain  
 7 of command responsible for a failure to respond. All of this information was supplied to  
 8 Chief Kiyler of the Monitor team on June 11, 2014. In fewer than 48 hours, all remaining  
 9 surveys from compensated sworn personnel had been received. The Monitor's Update  
 10 ignores all of these efforts and accomplishments, but instead focuses on the Monitor's  
 11 suspicions of the inadequacy of this investigative process addressed further in Section II,  
*infra*.

12 The Monitor has continually questioned whether self-reporting was the correct  
 13 investigatory mechanism because the Monitor presupposes that deputies would destroy  
 14 evidence of their own misconduct. But this has proven not to be the case. All Self-  
 15 Reporting Survey recordings received **are** being reviewed for Policy and/or Criminal  
 16 violations. MCSO received no less than 2,163 videos from the self-reporting surveys, with  
 17 30 incidents being forwarded for lieutenant review. Of those 30 lieutenant reviewed videos,  
 18 6 were referred back to the Division for investigation which could result in disciplinary  
 19 action. This information was presented in detail to the Monitor Team during the August 25<sup>th</sup>  
 20 – 27<sup>th</sup> meetings with Chief Kiyler and Chief Martinez along with the results of the lieutenant  
 21 reviews on the Armendariz videos and HSU videos.

22 B. Unfair Criticism of Investigative Techniques Due to Monitor Conflation  
 23 of Criminal and Administrative Investigations

24  
 25 <sup>2</sup> MCSO has continued to pursue responses from non-compensated reserve personnel and  
 26 from volunteer posse members. Admittedly, the MCSO's databases for tracking MCSO  
 27 posse personnel could be improved, and efforts are underway to update the rosters and to  
 28 deactivate any posse personnel who have not completed any Court-ordered requirements:  
 signing the attestation logs, completing the audio/video survey, or mandatory training.

1 In the Monitor's Update and during countless interactions with the MCSO, the  
 2 Monitor has consistently confused (or conflated) the criminal and administrative interview  
 3 and investigative processes.

4 1. *Monitor's Assumption of Deputies' Guilt*

5 Former deputy Cisco Perez, whose testimony the Monitor credits, was terminated  
 6 from MCSO in September 2013 for *untruthfulness* following a criminal and administrative  
 7 investigation that was the product of an eight-month-long wiretap conducted by MCSO on  
 8 its own personnel. As a result of this wiretap, initiated by the MCSO, another former deputy  
 9 is still facing criminal charges of human smuggling and drug trafficking, and several other  
 10 MCSO employees were disciplined, terminated, or resigned. On June 5, 2014, following his  
 11 termination, former deputy Perez raised allegations of taking of property (by himself *and*  
 12 *others in HSU*) in an after-the-fact attempt to explain his misconduct to obtain  
 13 unemployment benefits. Although his motives and his history call into serious doubt the  
 14 veracity of his statements, PSB immediately notified the Monitor of his allegations and of  
 15 their intent to pursue any possible criminal misconduct.

16 None of these actions by the MCSO/PSB are consistent with the Monitor's  
 17 insinuations that the MCSO/PSB intentionally overlooked or failed to act upon misconduct  
 18 by MCSO personnel – they support the opposite conclusion. Moreover, the PSB investigator  
 19 who is extensively criticized by the Monitor had, in fact, been previously assigned to this  
 20 aggressive wiretap investigation and interviewed Deputy Perez, who was later terminated for  
 21 untruthfulness. It is imperative that the Court also be made aware of these facts.

22 2. *Monitor's Lack of Knowledge About Historical Investigation*

23 The Monitor criticizes PSB for “put[ting] forth the theory” that the alleged  
 24 misconduct was “confined to a small group of rogue employees” and that “this opinion  
 25 would permeate the investigations and would inhibit good investigatory and interviewing  
 26 practices.” This so-called “theory” was actually the investigative conclusion of the  
 27 aforementioned eight-month-long wiretap investigation and the misconduct it revealed. It  
 28 was not theory but, rather, a fact proven by the prior investigation. The Monitor's  
 assumption of widespread corruption, on the other hand, is not supported by the extensive



1 wiretap investigation or the nearly 50 interviews conducted during the recent criminal  
 2 inquiry. The Monitor's theory of corruption is, in fact, only supported by the self-serving  
 3 claims of a deputy terminated for dishonesty.

### 4 3. Monitor's Overreaching Statements

5 The Monitor's Update alleges that "poor interrogation skills were observed during the  
 6 administrative and criminal interviews conducted in response to allegations made by Deputy  
 7 Cisco Perez, who had been terminated." See Monitor's Update at p.2. However, at the time  
 8 of the Monitor's submission, **no administrative interviews** had been conducted regarding  
 9 the allegations made by former Deputy Cisco Perez. A *criminal* interview cannot be used to  
 10 ask questions regarding *administrative* violations without the statutory prerequisites for an  
 11 *administrative* interview being met. The Monitor's overreaching criticism appears to be  
 12 more than mere confusion, as the Monitor recently requested (and received) a proposed  
 13 script of questions that would be asked of the deputies in the *administrative* investigation  
 14 relating to the allegations made by Perez - the potential mishandling of property and  
 15 evidence.<sup>3</sup>

16 Nevertheless, the Monitor's suggested questions for the criminal interviews attempted  
 17 to do just that – to use the criminal interview process to acquire information that was not  
 18 related to a pending *criminal* charge, but instead as an improper tactic for establishing  
 19 *administrative/civil* violations. MCSO's attempts to explain and maintain this distinction  
 20 have been criticized as "resistance" and underlie many of the Monitor's criticisms, when, in  
 21 fact, such actions by the PSB were to comply with the due process protections mandated by  
 22 law.

23 The Monitor's criticism of the techniques used by PSB, including the failure to act on  
 24 leads provided through the interviews, reinforces the Monitor's confusion or conflation of  
 25 the distinction between criminal and administrative investigations. On page 34 of the

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26 <sup>3</sup> There are eight (8) separate administrative investigations being handled by PSB in relation  
 27 to Armendariz and HSU. The Monitor refers generally to an "HSU Administrative  
 28 Investigation," and an "HSU Criminal Investigation" but the discussions with the Monitor  
 team have addressed different aspects of different investigations with different decisions  
 made for each, including the questions to be asked.



1 Monitor's Update, for example, the Monitor criticizes PSB for failing to follow up during a  
2 *criminal* interview to determine whether a deputy in the Human Smuggling Unit ("HSU")  
3 was responsible for the inventory and assignment of video cameras – an *administrative issue*.  
4 Such questioning would be utterly irrelevant with respect to the *criminal* conduct being  
5 investigated – i.e. potential theft of property.

6 Similarly, the Monitor's Update criticizes PSB for failing to follow up regarding the  
7 potentially improper impounding, retention, or handling of property. This is an  
8 *administrative* issue, not a criminal one. The *criminal* interview process cannot be used to  
9 delve into administrative matters and circumvent the legal requirements for conducting an  
10 administrative interview.

11 The Monitor's Update also complains that PSB failed to "consistently and properly  
12 provide *Miranda* warnings" and that the PSB investigator's "friendly" demeanor  
13 demonstrated poor interview technique that "lacked rigor." Both statements are inaccurate.  
14 The investigator's conduct was the result of (1) the questionable "investigative detention"  
15 (because employees were free to refuse to be interviewed) and the "reasonable suspicion"  
16 underlying the criminal inquiry for theft (given the lack of reliability of the source of this  
17 information), (2) the angst the investigator felt about being asked by the Monitor to explore  
18 *administrative* lines of questioning during a *criminal* investigation, and (3) the investigator's  
19 strategy with respect to obtaining information under the circumstances (including the fact  
20 that the investigation stemmed from a self-serving allegation of possible criminal conduct by  
a former MCSO deputy who was terminated for dishonesty, as discussed below).

21 The Monitor's Update states that "after significant hesitation and negotiation" the  
22 Monitor team was "afforded the opportunity to review and comment on proposed questions  
23 in the criminal investigation." The only hesitation on the part of MCSO, aside from the legal  
24 constraints of the 4<sup>th</sup> Amendment and A.R.S. §38-1101 et seq., was to scripting questions at  
25 all. Trained investigators do not write a script of questions in advance of their interviews but  
26 work with a framework of question topics and adapt their questions to the reactions and  
27  
28

1 answers provided by the witness.<sup>4</sup> This Monitor approved the Court-ordered training for all  
 2 deputies, which includes this statement: “the initial suspicion that gave rise to the  
 3 justification for the investigative detention must remain the focus of the questioning and  
 4 investigative techniques during the encounter.” The Monitor’s suggested line of questions  
 5 for the *criminal* investigation went well beyond the “initial suspicion that gave rise to the  
 6 justification for the investigative detention,” even assuming that such interviews rise to the  
 7 level of an investigative detention and that the statements made by Perez give rise to  
 8 “reasonable suspicion” of theft.

9 The Monitor’s complaint<sup>5</sup> that it was not made aware of the commencement of  
 10 interviews in the criminal inquiry until June 16 is false. PSB notified the Monitor of the  
 11 allegations made by the former deputy on June 12, that Captain Bailey called Deputy  
 12 Monitor John Girvin that same day to discuss the matter, and that PSB notified the Monitor  
 13 in writing on June 13 that the criminal inquiry had been initiated, reciting the prior call to  
 14 Commander Girvin.

15 Finally, the Monitor’s Update states that this criminal inquiry “derailed” the overall  
 16 investigative effort. However, during the entire criminal inquiry, the video review process  
 17 continued, the cataloging and investigation of the evidence retrieved from Armendariz’  
 18 residence continued, and PSB continued to draft weekly reports to the Monitor  
 19 demonstrating this progress.

#### 20 C. Monitor’s Concerns Regarding Prosecutorial Review

21 The Monitor’s criticism focuses in large part upon there being no criminal charges  
 22 arising from the criminal investigation. Such a conclusion, especially given the genesis of  
 23 this particular investigation, presumes the guilt of MCSO deputies. The Monitor’s concern  
 24 that “no official [prosecutorial] review had been conducted by MCAO” is unfounded and

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25 <sup>4</sup> The Monitor did not request that the MCSO investigator in charge of the Armendariz death  
 26 investigation submit her entire line of questions in advance of conducting interviews; and yet  
 27 the Monitor raises no criticism of her interview techniques in this or any other respect.

28 <sup>5</sup> The Monitor’s criticism even extends to the location of interviews, which was changed in  
 order to address the Monitor’s stated concerns that some of the interviews were only being  
 recorded via audio, rather than audio-video.

1 mischaracterizes the interactions between MCSO and MCAO. On occasion, MCSO will  
2 contact MCAO over the phone or in an informal setting to discuss threshold issues of law  
3 and statutory interpretation to establish a minimum standard for submitting charges for  
4 prosecutorial review. It was the opinion of Captain Bailey and the investigator at that time  
5 that there was not sufficient evidence of a crime to submit the matter to the MCAO for  
6 prosecution. Submitting any type of report or transcripts of interviews<sup>6</sup> to the MCAO for  
7 prosecution without probable cause to support a crime would be a waste of resources.

8 In this matter, the investigator spoke with an MCAO prosecutor, who, based on the  
9 facts provided, was of the opinion that there was not sufficient facts of theft stated to meet a  
10 prosecutorial threshold, but stated that he would also staff the case with his prosecutorial  
11 team members. Theft requires an identifiable victim that can testify to the ownership of  
12 property and an expressible monetary value of an item taken without permission. None of  
13 those elements were present.

14 This information was reported the following day in the weekly PSB report to the  
15 Monitor. But during the following Monitor site visit, the Monitor *again* asked whether the  
16 MCSO intended to obtain a written opinion of the MCAO turning down any possible cases  
17 for prosecution. MCAO attorney Christine Stutz questioned the basis for the Monitor's  
18 "suggestion" – was the Monitor suggesting that all criminal inquiries where MCSO  
19 determines that there is insufficient evidence to charge someone with a crime be submitted to  
20 the MCAO for formal review and turndown? The response from Chiefs Kiyler, Martinez  
21 and Major Peters of the Monitor team was that it was the "high profile" nature of this case  
22 that warranted having a "second opinion" about the conclusion reached by the MCSO that  
23 there was no basis for pursuing any criminal charges.<sup>7</sup>

24 In an effort to satisfy the Monitor team, Captain Bailey advised that he would again  
25 review the Monitor's concern with Chief Deputy Sheridan. Thereafter, MCSO decided to

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26 <sup>6</sup> Captain Bailey informed the Monitor that he thought the investigator had "conferred with  
27 and briefed the county attorneys on this case but was unsure." Captain Bailey was, however,  
28 confident that the county attorneys had not seen any transcripts or reports.

<sup>7</sup> It is not MCSO's determination whether criminal charges will be pursued. MCSO only  
submits facts where it believes a crime has been committed.

1 seek the additional assistance and opinion of the MCAO Law Enforcement Legal Liaison,  
 2 Keith Manning, in order to quell the concerns of the Monitor that the MCSO was failing to  
 3 pursue criminal charges as a result of its “preconceived notions” or “lack of investigatory  
 4 skills.” After reviewing the HSU Criminal Inquiry memorandum, on October 7, 2014, Mr.  
 5 Manning confirmed that in order to proceed with a criminal prosecution, the state would  
 6 need to be able to prove beyond a reasonable doubt that the item seized had some value and  
 7 that there was an identifiable victim who could testify accordingly. There was no such  
 8 evidence available.

### 9 **III. Inaccurate Tracking of Information and Documents Provided by MCSO**

10 The MCSO faces a constant barrage of requests from the Monitor team for  
 11 information and documents that have already been provided and questions from the Monitor  
 12 team that call into serious question whether the documents being provided (often on multiple  
 13 occasions) are even being reviewed. Unfortunately, these errors have contaminated a  
 14 number of points raised in the Monitor’s Update.

#### 15 **A. Recording Devices Survey**

16 Against the merits of this monumental collection effort, the Monitor harps on the fact  
 17 that the survey allegedly failed to capture the manufacturer of the device and the type of  
 18 recording device (i.e. audio, video, and audio/video). In fact, the survey did capture the type  
 19 of recording device exactly as the directive was made by the Court’s May 15 Order. The  
 20 MCSO had identified all types of cameras and recording devices that were purchased by the  
 21 MCSO from 2007 forward. All of this information was supplied to the Monitor team by the  
 22 Court Compliance and Implementation Division (“CCID”) and then supplied again by PSB.  
 23 Three separate tabs in the survey spreadsheet (*Original, Reformatted, and Splits*), reference  
 24 **Audio and Video**, and if the specific device for each person was an **Eyeglass cam, Dash**  
 25 **cam, Body-Mount cam, Taser-Weapon cam, Taser-Axon cam, Video, or Audio, as well**  
 26 **as whether the device was County Owned or Personally Owned.** This wording was  
 27 pulled directly from the May 15 Court Order. Updated versions of this spreadsheet have been  
 28 supplied weekly to the Monitor Team since the beginning of July 2014.

Nevertheless, the Monitor continuously pushed the MCSO beyond the Court’s orders

1 to obtain the make, model *and serial number* of every device that had been identified. At  
2 one point, after the Monitor was informed that certain recording devices had no serial  
3 numbers, Captain Bailey was required to bring in an example of one of the devices to prove  
4 that devices of this type contained no serial number. As evidenced by the Monitor's Update  
5 (p.8), the Monitor has now finally agreed that compliance with the Court's Orders required  
6 "at a minimum, the agency must capture the type of device. . . and its recording capability...  
7 and any other information that is readily available (make, model, serial number) should be  
8 noted." This information has been provided to the Monitor on numerous spreadsheets  
9 provided to the Monitor team on a weekly basis. Yet, as late as the Monitor's most recent  
10 site visit during the week of September 22-26, 2014, the Monitor team still did not believe  
11 that this information had been provided. Detectives and analysts were required to explain,  
12 yet again, that the Court-required information had been collected and recorded on the  
summary spreadsheets.

13 The Monitor Update indicates the video spreadsheet did not capture specific notations  
14 regarding policy and law violations. This is an inaccurate statement. During the in-service  
15 training, detectives were advised that if they saw a policy, law or civil rights violation, the  
16 detectives were to indicate the video needed "further review" by a Lieutenant. This process  
17 was clearly outlined to the Monitor Team during their visit in June 2014 and in subsequent  
18 site visits in July, August and September 2014. The videos that were referred to a Lieutenant  
19 for further review included columns that focused on the type of violation, (e.g. policy, A.R.S.  
20 or civil rights violation) that was observed in the video and the personnel involved. In a  
21 memorandum dated July 21, 2014, PSB submitted an action plan to the Monitor Team  
22 detailing the process in which the Lieutenants Reviews would occur. The results of the  
23 Lieutenant Review process were discussed in detail with the Chief Kiyler and Chief  
24 Martinez during the August 2014 site visit. The PSB team reviewed the outcome of the  
25 videos that were referred for further review with the Monitor Team including how many  
26 were referred to the Divisions or PSB for further investigation and possible disciplinary  
27 action. Case Summaries for each of the incidents that were referred back to the Division or  
28 to PSB were submitted to the Monitor Team in the September 17 and September 24, 2014

1 Weekly reports.

2 B. Investigative Plans

3 The Monitor has inserted itself in virtually every aspect of the investigative process.  
 4 After the Monitor criticized the lack of a comprehensive investigatory plan in late May, more  
 5 detailed investigative plans were developed and submitted, including a supplemental  
 6 investigatory plan dated June 12, 2014. Following that plan, numerous action plans have  
 7 been submitted to the Monitor team identifying every significant milestone step in the  
 8 investigatory process. The Monitor also receives a written weekly report on all of the  
 9 investigative actions taken, in addition to their numerous site visits, phone calls, and emails  
 10 about these investigations.

11 C. Physical Evidence

12 The collection of evidence from Armendariz' residence was initially done by  
 13 detectives from MCSO's District Two, not the Special Investigations Division ("SID") as the  
 14 Monitor Update states. The evidence was not packaged consistent with MCSO standards.  
 15 Multiple items of evidence were packaged together, resulting in an inaccurate number of the  
 16 total items of evidence being reported. The evidence was later repackaged and renumbered  
 17 by MCSO SID. SID also discovered and seized additional items of evidence from other  
 18 locations. However, *with the agreement of the Monitor Team*, MCSO has continued to refer  
 19 to these items as the "618" items or the "618" list. The Special Investigations Division  
 20 ("SID") was tasked with research and intelligence as to the seized items in order to  
 21 ultimately correlate those items with the individuals and incidents from which they were  
 22 seized.

23 The Monitor's Update at page 14 states that the SID's research was being input into a  
 24 spreadsheet "*which will then be compared to traffic stop data.*" (Emphasis added.) This task  
 25 was accomplished when the spreadsheets of video reviews were merged<sup>8</sup> with the

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26 <sup>8</sup> Although the Monitor claims credit for the concept of a "merged" spreadsheet, the concept  
 27 was actually suggested and implemented by the MCSO. The Monitor also alleges that the  
 28 spreadsheets have been improved based upon the Monitor's suggestions. In fact, the  
 spreadsheets have been modified multiple times as a result of the Monitor's inquiries, often

1 evidentiary spreadsheets in August 2014. The report goes on to state “[e]very document *is*  
2 *intended to be identified* and cataloged on the spreadsheet.” (Emphasis added.) This task  
3 was accomplished on approximately August 15, 2014. In fact, during the Monitor’s  
4 September site visit, the Monitor team was advised that MCSO was now going to begin  
5 contact with those civilians for whom the MCSO was unable to locate any related video or  
6 other traffic data pursuant to the Action Plan that was drafted and submitted to the Monitor  
7 on June 19, 2014. A revised plan of action began to be developed on September 26, 2014  
8 and was completed and provided to the Monitor on October 2, 2014.

9 PSB has kept the Monitor advised of these efforts, and supplemental reports were  
10 written on every aspect of the repackaging and recovery of evidence. The Monitor has never  
11 requested to review these supplemental reports or anything related to the handling of the  
12 evidence other than the MCSO’s spreadsheets of data.

13 Nevertheless, the Monitor’s Update ignores all of this information received from PSB  
14 and made available to the Monitor and simply alleges that “MCSO continues to list multiple  
15 pieces of evidence in a single line item.” The Monitor’s Update also inaccurately claims  
16 that “On September 22, 2014, Capt. Bailey advised that there has been minimal follow up on  
17 the evidentiary items that were seized.” What Captain Bailey actually advised the Monitor  
18 was that there had been extensive research conducted on every item of evidence but that no  
19 civilian/citizen contact had been made at that time. MCSO advised the Monitor Team that it  
20 had researched all items of property found in the Armendariz home, including searching  
21 through all of his TOC data (over 70,000 lines of information) to confirm whether or not he  
22 had run the identification. In all, by researching CAD history, his TOC history, JMS  
23 Booking history, traffic stop video data, and Citation/Tow information for Armendariz, there  
24 were 239 items of searchable property that could not be linked by information in MCSO  
25 database searches. Those items will be followed up by civilian interviews and a “log-scan”  
26 that can be provided by the Department of Public Safety.

27 for information already contained in the previous version of the spreadsheet. Unfortunately,  
28 the modification of the spreadsheets to address these requests has also consumed a  
considerable amount of the analyst’s time and slowed progress.



1 It is a misrepresentation of facts by the Monitor to insinuate minimal follow-up has  
 2 been done on the items of property found in the Armendariz home; almost 100,000 lines of  
 3 data have been searched on each item of property to try and understand why that piece of  
 4 property was found in his residence.

5 D. Copies of Videos

6 The Monitor team repeatedly demanded instantaneous reproduction of the video  
 7 evidence retrieved from the Armendariz residence and supplied in response to the surveys.  
 8 Yet, the Monitor did not even retrieve their copies of hundreds of video discs at issue until  
 9 August 28, 2014, even though all videos had been copied (at great expense in terms of  
 10 MCSO personnel time) and offered to the Monitor in July 2014. Captain Bailey even  
 11 reminded the Monitor team of the availability of those videos on August 1, 2014.

12 E. Armendariz' Personnel History

13 With respect to Armendariz' personnel history, pages 18 and 19 of the Monitor's  
 14 Update discuss what occurred in June 2014 and the information Captain Ken Holmes  
 15 reported to the Monitor team at that time. The Monitor is critical of Captain Holmes'  
 16 reporting of what he had learned "anecdotally" about Armendariz' personnel history from his  
 17 subordinate investigators. The Monitor's Update is also critical of Captain Holmes for being  
 18 "unable to provide specific documentation to support the assertions he made about the  
 19 supervision of Armendariz."

20 This criticism is unproductive at this time. Captain Holmes was replaced by Captain  
 21 Bailey on June 6, 2014, nearly four (4) months ago. And the MCSO has, in fact, provided  
 22 the Monitor team with complete copies of Armendariz' personnel and division files on May  
 23 22, 2014 and May 28, 2014. This update renders the Monitor's historical critique irrelevant.

24 F. Timeline of Armendariz Citizen Complaints and Merging of Data

25 The Monitor's Update states that, as of July 17, 2014, PSB "began to construct a  
 26 timeline of Armendariz citizen complaints, PSB investigations and other incidents that  
 27 occurred while Armendariz was employed with the MCSO" and that "**when this timeline is  
 28 completed**, the MCSO and the Monitoring Team should have a much clearer understanding  
 of the Armendariz employment history."

1 In actuality, the timeline was started by Sergeant Fax on June 30, 2014, completed,  
 2 and provided to the Monitor in person during the September 22-26 site visit and by  
 3 electronic document production with the weekly PSB report. Moreover, it is notably  
 4 “paraphrased” in the Monitor’s Update. The plan for merging of the spreadsheet data began  
 5 June 25, 2014, action plans were submitted to the Monitor on this process in early August  
 6 and the merging was completed by the August 15, 2014 weekly report, subject to being  
 7 audited for quality assurance.

#### 8 G. Video Review Process

9 The Monitor’s Update states that no guidelines were provided to the detectives who were  
 10 assigned to review videos for possible criminal or civil misconduct. This is inaccurate. Both  
 11 Sgt. Morris and Sgt. Fax drafted written guidelines that were provided to the Monitor Team  
 12 and Sgt. Fax provided an in-service to all detectives who were assigned to this process. The  
 13 MCSO further provided a written action plan for the lieutenant review process as well as in-  
 14 service training.

#### 15 H. Pending Investigation of Armendariz’ Supervisors

16 The Monitor’s Update alleges that Armendariz’ supervisors failed to take  
 17 administrative action against Armendariz. Once again, however, the Monitor fails to provide  
 18 to the Court the most crucial information with respect to this complaint – that the MCSO has  
 19 a pending administrative investigation concerning this very matter. By omitting this salient  
 20 fact, the Update gives the appearance that MCSO tacitly approves of such conduct or is  
 21 treating it with “nonchalance.”

22 Finally, the Monitor’s criticism of the promotion of persons while an administrative  
 23 investigation is pending not only raises again the concern that the Monitor has presumed the  
 24 guilt of such persons but also ignores that such persons may be removed from such positions  
 25 at any time, for any reason (or no reason) at the pleasure of the Sheriff or his designee.  
 26 While the Monitor team states to MCSO that “personnel decisions are yours to make,” the  
 27 Monitor’s Update is consistently critical of all such decisions.

#### 28 V. **Conclusion**

The Monitor’s Update is premised upon misstatements, material omissions,

1 mischaracterizations, and unfounded assumptions that create the false appearance of an  
 2 organization not deeply committed to conducting its criminal and administrative  
 3 investigations with the utmost integrity and vigor and in compliance with Arizona law and  
 4 the Court's orders. The MCSO's investment in these investigations, whether measured by  
 5 time, expense, or work product, evidences its sincere commitment to these endeavors and  
 6 earnest desire that justice be served.

7 The MCSO is willing to provide *under seal* or for the Court's *in camera* inspection,  
 8 copies of the documents supporting this Response and will ensure the attendance at the  
 9 October 28, 2014 hearing of members of the PSB to provide to the Court *under seal* such  
 10 additional updates and information as the Court requires regarding these investigations.

11 DATED this 21st day of October, 2014.

12 SCHMITT SCHNECK SMYTH CASEY & EVEN,  
 13 P.C.

14 s/James L. Williams

15 James L. Williams

16 Timothy J. Casey

17 1221 E. Osborn Rd., Suite 105

18 Phoenix, Arizona 85014

19 Counsel for Defendants Joseph M. Arpaio and the  
 20 Maricopa County Sheriff's Office

21 Thomas P. Liddy

22 Deputy County Attorneys, Civil Services Division

23 Maricopa County Attorney's Office

24 222 N. Central, Suite 1100

25 Phoenix, Arizona 85004

26 Co-counsel for Defendants Joseph M. Arpaio and  
 27 the Maricopa County Sheriff's Office

### 28 **CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 2014, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

The Honorable G. Murray Snow  
 United States District Court  
 401 West Washington Street,  
 Phoenix, Arizona 85003-2158

Stanley Young, Esq.  
 COVINGTON & BURLING, LLP

1 333 Twin Dolphin Road  
2 Redwood Shores, California 94065  
3 Counsel for Plaintiffs

4 Daniel Pochoda, Esq.  
5 ACLU FOUNDATION OF ARIZONA  
6 3707 N. 7<sup>th</sup> Street, Suite 235  
7 Phoenix, Arizona 85014  
8 Counsel for Plaintiffs

9 Cecillia Wang  
10 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
11 IMMIGRANTS' RIGHTS PROJECT  
12 39 Drumm Street  
13 San Francisco, California 94111  
14 Counsel for Plaintiffs

15 Andre Segura, Esq.  
16 AMERICAN CIVIL LIBERTIES UNION FOUNDATION  
17 IMMIGRANTS' RIGHTS PROJECT  
18 125 Broad Street, 18<sup>th</sup> Floor  
19 New York, NY 10004  
20 Counsel for Plaintiffs

21 Jorge Castillo, Esq.  
22 MEXICAN AMERICAN LEGAL DEFENSE  
23 AND EDUCATION FUND  
24 634 S. Spring Street, 11<sup>th</sup> Floor  
25 Los Angeles, California 90014  
26 Counsel for Plaintiffs

27 Thomas P. Liddy  
28 Deputy County Attorneys, Civil Services Division  
Maricopa County Attorney's Office  
222 N. Central, Suite 1100  
Phoenix, Arizona 85004  
Co-counsel for Defendants Joseph M. Arpaio and  
the Maricopa County Sheriff's Office

s/Eileen Henry  
Eileen Henry, Paralegal  
SCHMITT SCHNECK SMYTH CASEY & EVEN, P.C.