

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF ARIZONA

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4 Manuel de Jesus Ortega)
Melendres, et al.,)
5)
Plaintiffs,) CV 07-2513-PHX-GMS
6)
vs.) Phoenix, Arizona
7) November 20, 2014
Joseph M. Arpaio, et al.,) 1:35 p.m.
8)
Defendants.) **SEALED PROCEEDINGS**
9 _____)

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14 REPORTER'S TRANSCRIPT OF PROCEEDINGS

15 BEFORE THE HONORABLE G. MURRAY SNOW

16 **STATUS CONFERENCE - SEALED PROCEEDINGS**

17 **(Page 65, Line 20, through Page 77, Line 15)**
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20 THE COURT: Thank you. Please be seated.

15:17:48

21 All right. As I've indicated, this matter is now
22 under seal. I am going to have everyone in the courtroom and
23 on the line, as I did before, identify their presence, and I'm
24 going to make it clear that anything that we discuss here is
25 not to be discussed elsewhere without further order of the

15:18:11

1 Court.

2 So unless you're a member of the court staff, identify
3 yourself on the record now, please, beginning with those on the
4 phone.

5 CHIEF WARSHAW: Yes, Judge. This is Chief Warshaw
6 along with Chief Martinez and Commander Girvin.

15:18:27

7 THE COURT: All right.

8 MR. SEGURA: And this is Andre Segura with the ACLU.
9 Annie Lai had to jump off.

10 MR. POCHODA: And Dan Pochoda.

15:18:44

11 MR. CASEY: Your Honor, Tim Casey and James Williams
12 are remaining in the hearing simply for continuity purposes to
13 assist Mr. Liddy, but Mr. Liddy will present to the Court.

14 THE COURT: All right. Well, then you will be
15 similarly bound, but we haven't had somebody from plaintiffs'
16 table.

15:18:59

17 MR. BENDOR: Josh Bendor.

18 THE COURT: Okay. Thank you.

19 MR. LIDDY: Thomas Liddy from the Maricopa County
20 Attorney's Office representing Sheriff Arpaio and MCSO.

15:19:09

21 CHIEF DEPUTY SHERIDAN: Jerry Sheridan, Chief Deputy,
22 Maricopa County Sheriff's Office.

23 MR. WILLIAMS: James Williams.

24 MR. LIDDY: And Christine Stutz, also from MCAO, and
25 Sergeant Fax, Your Honor.

15:19:24

1 THE COURT: All right. For those of you who are on
2 the phone, I guess I want an avowal that nobody else is on the
3 line that's in your presence, please.

4 MR. SEGURA: No one here in New York. This is Andre
5 Segura. 15:19:37

6 Julie, are you still on from Covington?

7 CHIEF WARSHAW: Judge, no one else is present where --
8 in our location.

9 THE COURT: All right. Mr. Liddy.

10 MR. LIDDY: Your Honor, we want to alert the Court 15:19:59
11 that in our review of the traffic stop videos we did identify
12 one stop which has been referred to as the Korean stop that
13 occurred on November 1st, 2012, which is significant because
14 that was after this Court's order, this injunction to stop
15 doing the interdiction patrols. 15:20:24

16 Our review of that tape has led us to believe that it
17 was an interdiction patrol, and that gave rise to an MCSO
18 investigation and that investigation is ongoing. But so far in
19 that investigation two lieutenants have been interviewed, and
20 those interviews have revealed, and the MCSO has concluded, 15:20:45
21 that this Court's order was not communicated to the line troops
22 in the HSU. And so that has spawned an additional
23 investigation up the chain of command as to exactly why they
24 were not, and how it came to be that they were not.

25 We have identified an e-mail from Mr. Casey to Brian 15:21:10

1 Sands, Chief Brian Sands, Chief Jack MacIntyre, Chief Jerry
2 Sheridan, and Lieutenant Sousa. Lieutenant Sousa has already
3 been interviewed. And so that gives rise to reason for
4 additional investigations and interviews.

5 However, two of those personnel -- excuse me, one of 15:21:34
6 those, Chief Sheridan, has already been -- has already
7 testified under oath as to his actions regarding that.

8 THE COURT: Where was that?

9 MR. LIDDY: That was in the DOJ case. And the
10 DOJ has -- 15:21:57

11 THE COURT: I appreciate this, Mr. Liddy, and I want
12 to let you finish what you're going to say, but I will tell you
13 that when I indicated that I had already discussed with the
14 monitor areas of separate investigation and I wouldn't be bound
15 by the fact that you were going to start new areas, this is 15:22:07
16 one.

17 MR. LIDDY: I understand, Your Honor. I'm not asking
18 for any court action. I just want to let the Court know that
19 this has occurred, and that this investigation is ongoing.

20 THE COURT: Well, who's in charge of this 15:22:21
21 investigation?

22 MR. LIDDY: A portion of this investigation has had to
23 move out to Investigator Don Vogel, who has already been
24 investigating key personnel in the chain of command and
25 leadership on a separate investigation, and it is MCSO's intent 15:22:39

1 to expand his portfolio to also investigate those, so that the
2 people underneath the chain of command aren't the ones
3 investigating those in leadership.

4 THE COURT: You know, just so that we can be open, let
5 me just tell you that I had already directed Chief Warshaw, 15:22:58
6 who's now on the phone, to begin investigating this. I do not
7 know whether or not Chief Warshaw will find what you're
8 proposing to do acceptable and so I'm not precluding myself, or
9 him, from conducting an independent investigation.

10 However, one of the things you'll see in the order 15:23:17
11 that I discussed with you in the open hearing is one of the
12 things I'm going to require you to do when you begin an
13 investigation is lodge a description with this Court that tells
14 the subjects of the investigation, the number of the
15 investigation, and the subject matter of each investigation, 15:23:35
16 and when you adjust that investigation you have to also lodge
17 that under seal with this Court, provide written notice to the
18 monitor.

19 You'll have to do that as soon as you get the order,
20 anyway, but then you better -- you probably will need to 15:23:48
21 undertake discussions with my monitor as to whether or not what
22 you're doing is adequate to him or whether or not I'm going to
23 assume that investigation. And while we're at it, just so long
24 as we're not playing hide the ball, I don't think you have the
25 authority to investigate Sheriff Arpaio, do you? 15:24:04

1 MR. LIDDY: I want to make sure I'm clear. I,
2 Tom Liddy, MCAO --

3 THE COURT: No, no --

4 MR. LIDDY: -- investigate that.

5 THE COURT: -- no, I mean the MCSO. In 38-1101, he's 15:24:13
6 not an employee.

7 MR. LIDDY: That is correct, Your Honor, no.

8 THE COURT: And so 38-1101 does not apply to Sheriff
9 Arpaio, does it?

10 MR. LIDDY: I'd have to research that, Your Honor, but 15:24:23
11 I have a feeling --

12 THE COURT: Well, I will tell you that --

13 MR. LIDDY: -- I know where it will come out.

14 THE COURT: -- I don't see how it does, he's not an
15 employee. 15:24:35

16 MR. LIDDY: And just so it's clear, I've not indicated
17 that we're investigating Sheriff Arpaio.

18 THE COURT: I know, but just so we're clear, I'm
19 indicating I intend to, or at least that's high on my radar.

20 And so Mr. Casey, to the extent that there might be a 15:24:49
21 due process violation, I'm now informing you that Sheriff
22 Arpaio will be one of the people that I will require to appear
23 here on December 4th under oath, and I am going to investigate
24 him pursuing -- pursuant to his compliance with my orders.

25 I guess I don't need to tell you that, Mr. Casey; I 15:25:08

1 need to tell you that, Mr. Liddy. He will be here on December
2 4th. And if I'm going to name others, I will name them
3 shortly. But frankly, in deference, Mr. Liddy, to the fact
4 that you might have, and I'm not -- I don't mean to be
5 pejorative by this point, but to the extent that you can 15:25:25
6 convince my monitor of any cooperation with him and you now
7 have a team in place in which you can get a fair investigation
8 of some of these people, I might hold off on conducting my own
9 investigation and allow you that opportunity, but I might not.
10 Because, as I said, I feel like I've given lots of 15:25:43
11 opportunities, and so we're going to have to have this be a lot
12 more specified, defined process, and that is what you will see
13 in my order.

14 MR. LIDDY: Your Honor, if the Court would like, we
15 can put some more meat on those bones with Sergeant Fax and 15:25:59
16 Christine Stutz. However, because of the --

17 THE COURT: Well, let me tell you --

18 MR. LIDDY: -- investigation --

19 THE COURT: -- one of the things that I'm not going to
20 take out of my order that's still in there is that Seagraves 15:26:08
21 and Fax did a pretty good job, as far as my monitor was
22 concerned, in the rather limited areas of the investigation
23 that they were asked to undertake. I've left that in my order.

24 I have not put Sergeant Tennyson's name in my order
25 but let me tell you, I have reviewed since some of the 15:26:28

1 interviews he did and they are a joke, and it is a serious
2 joke. And so to the extent that you can convince my monitor
3 that it isn't going to be that kind of a joke any more, then I
4 may hold off on who I -- and see what you can uncover. But if
5 you -- but if you don't convince him, I'm not holding off. I
6 will do the investigation.

15:26:50

7 MR. LIDDY: I understand. I appreciate, Your Honor.

8 However, I do want to say that I'm absolutely
9 confident that no member of the investigative team at MCSO ever
10 considered these investigations a joke, and that we would
11 appreciate -- and that we would appreciate the opportunity to
12 prove our good faith by allowing the MCSO to continue these to
13 their duration.

15:27:03

14 At such time, the Court and the monitor could look at
15 the works of the MCSO's investigative effort, including that of
16 Mr. Vogel, before it makes its determination as to whether
17 there was any intent or action to undermine the investigations
18 or the Court's order, or to do anything in the self-interest,
19 quote unquote, of the MCSO, anything other than full, complete
20 compliance with this Court's orders.

15:27:25

15:27:48

21 THE COURT: Well, I won't make any findings, but I
22 have to say that some of the actions of the MCSO definitely
23 raise the possibility, and I'm going to -- I'm going to say
24 why.

25 I also will tell you, Mr. Liddy, and again, I am very

15:28:00

1 disappointed in some of the things that the MCSO has done, but
2 I also do not want to short play that I think that you,
3 Mr. Casey, Mr. Williams, spent a lot of effort in a serious,
4 good-faith desire to implement the training program, and I
5 don't want to shortchange that.

15:28:25

6 I also, Chief Deputy Sheridan, have recognized that
7 you've been at some town meetings that have been painful to
8 attend and made an effort to be there, and I don't want to
9 shortchange that. And I don't think those were bad faith
10 efforts, either one of them. But what has happened has
11 happened, and I simply am not going to now -- I guess what I'm
12 saying is you're on a much shorter leash.

15:28:38

13 I am willing to entertain the idea, if you can
14 convince my monitor, at least to postpone some of those
15 investigations, but one of the things that you need to talk
16 over with him right now, because I fully intend to call Sheriff
17 Arpaio in here on December 4th, is either coordination of that
18 investigation with what I intend to do with Sheriff Arpaio, or
19 if you can convince me that there's some other way to
20 effectively investigate him other than as a party, as the party
21 to this lawsuit, I'd bring him in here and ask the questions I
22 have. I don't know what else to do. But you can make whatever
23 proposals you want and I'll consider them, but I'm putting you
24 on notice right now that it is my intent to have Sheriff Arpaio
25 in here on December 4th at least.

15:29:01

15:29:22

15:29:44

1 MR. LIDDY: I understand, Your Honor. To the extent
2 that we could show the monitor and show the Court the chain of
3 this Court's order to counsel for MCSO, to key personnel at
4 MCSO, and the actions that were taken there, obviously, it's --
5 Sheriff Arpaio, he himself is responsible for everything that 15:30:04
6 his leadership and people do or fail to do. That's understood.

7 THE COURT: And, you know, frankly, I mean, I'm not --
8 and again, Chief Deputy Sheridan, I appreciate your being here;
9 I don't mean to downplay your presence. But Chief Deputy
10 Sheridan is not a party to this action. 15:30:22

11 MR. LIDDY: I understand.

12 THE COURT: Sheriff Arpaio is the party to this
13 action. He doesn't show unless I order him to come. He
14 doesn't come to the town meetings. He's going to start coming
15 now, because he needs to -- you know, the compliance of the 15:30:32
16 MCSO, unless I order him to do something, seems to be -- well,
17 we're just not going to create a plausible deniability
18 situation.

19 And that's my bias, but I'm not precluding you,
20 Mr. Liddy, from convincing my monitor that you've been fully 15:30:55
21 and completely disclosing, and if you can do that, I'll either
22 postpone that order or I will consider, to the extent I'm
23 convinced that you're operating in good faith, coordinating
24 investigations, even if I'm running a separate one, I'll
25 consider all those things, but you're on a short leash. 15:31:14

1 MR. LIDDY: I appreciate the opportunity, Your Honor.

2 THE COURT: All right. Anything else to be said?

3 MR. LIDDY: Not from defendant, Your Honor.

4 THE COURT: All right. Thank you.

5 MR. POCHODA: Nothing from plaintiffs, Your Honor.

15:31:27

6 THE COURT: All right. I think, Mr. Pochoda, you said

7 it well. This is a difficult action. It is disappointing and

8 it is important. But to the extent that we won't be seeing you

9 any more, Mr. Casey, Mr. Williams, I do want to thank you for

10 your cooperation with the plaintiff and your professionalism

15:31:51

11 here in your attempts to do that, without belittling in any

12 way, Mr. Liddy, your similar effort in that. And I'll

13 certainly expect the same from Ms. Iafrate.

14 Mr. Casey.

15 MR. CASEY: Your Honor, even though we were out, we

15:32:05

16 have the file. I would like you to have it on the record that

17 my firm can order from your capable court reporter the sealed

18 copy of the transcript so it can be provided to Ms. Iafrate

19 with the rest of our file.

20 THE COURT: I will enter that order. But I will also

15:32:21

21 advise you again, I've already done it, Mr. Casey,

22 Mr. Williams, you were here through this proceeding. It's

23 under seal.

24 MR. CASEY: Yes, sir.

25 THE COURT: You're bound just like everybody else on

15:32:28

1 the phone or in this courthouse not to discuss this matter
2 outside of this hearing, and guess what? Sheriff Arpaio's
3 here -- is not here. That means you don't discuss anything I
4 said with Sheriff Arpaio.

5 MR. CASEY: Your Honor, are you not -- I'm sorry. 15:32:44

6 MR. LIDDY: Your Honor, am I permitted by this Court
7 to inform Sheriff Arpaio that he will be here on the 4th of
8 December?

9 THE COURT: Yeah, I think -- I think I need to allow
10 that much, at least, to allow due process and preparation. 15:32:57

11 MR. LIDDY: Your Honor, also in an effort to assure
12 that defendant has due process, may any of these proceedings be
13 shared with Ms. Iafrate once she makes her appearance?

14 THE COURT: Absolutely.

15 MR. LIDDY: Thank you, Your Honor. 15:33:12

16 THE COURT: Ms. Iafrate will have access to this
17 entire proceeding as long as she agrees to be similarly bound
18 by it.

19 MR. LIDDY: Thank you, Your Honor.

20 THE COURT: Any other concerns, Mr. Pochoda? 15:33:23

21 MR. POCHODA: Let me just clarify. May we talk this
22 over with our co-counsel alone, not our clients? Obviously,
23 two are on the phone, but others would have to be --

24 THE COURT: I believe as long as Ms. Wang agrees to be
25 similarly bound, and Mr. Young. 15:33:39

1 MR. POCHODA: Right.

2 THE COURT: That is acceptable.

3 MR. LIDDY: Your Honor, and Ms. Annie Lai, who had to
4 drop off the call?

5 THE COURT: Yes, Ms. Annie Lai as well.

15:33:47

6 MR. LIDDY: Thank you, Your Honor.

7 THE COURT: I'm sorry. I've going to place on the
8 record that under the -- with the conditions I have stated on
9 the record, Mr. Pochoda is entitled to a copy without further
10 order and he's entitled to share it with those I've indicated
11 on the record without further order.

15:34:12

12 Mr. Casey, Mr. Liddy, are entitled to a copy without
13 further order, and they're entitled to share it without further
14 order to those that I've indicated on the record.

15 (Proceedings concluded at 3:34 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 25th day of November, 2014.

s/Gary Moll