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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF ARIZONA

10 Manuel de Jesus Ortega Melendres, on behalf
11 of himself and all others similarly situated; et
12 al.,

12 Plaintiffs,

13 v.

14 Joseph M. Arpaio, in his individual and official
15 capacity as Sheriff of Maricopa County, AZ; et
16 al.,

16 Defendants.

NO. CV-07-02513-PHX-GMS

**MEMORANDUM IN SUPPORT OF
SHERIFF ARPAIO'S
DECLARATION OF
COMPLIANCE WITH COURT
ORDERS AND OPPOSING THE
IMPOSITION OF A CRIMINAL
CONTEMPT REFERRAL**

17 Defendant Joseph Arpaio, Sheriff of Maricopa County, Arizona,
18 ("Defendant" or "Sheriff Arpaio") submits the following memorandum in response to the
19 issues raised by this Court on December 4, 2014, regarding Sheriff Arpaio's actions
20 regarding this Court's Orders. For the reasons stated in this memorandum, there is not a
21 sufficient basis to refer Sheriff Arpaio's actions to the United States Attorney's Office for
22 consideration in filing criminal contempt proceedings against Sheriff Arpaio. The Sheriff
23 is committed to carrying out the Orders of the Court, and avows that he will strive to be in
24 full compliance with all past, present and future court orders, ensure that those Orders are
25 presented to his entire office, and ensure that supervisory protocols are established to
26 maintain compliance.

27 Sheriff Arpaio readily concedes that mistakes have been made in the
28

1 communication and, in some instances, implementation of Court Orders. He genuinely
2 regrets those mistakes, and is committed to working with the Court Monitor to carry out
3 existing directives and minimize further mistakes. While he ultimately bears
4 responsibility for the breakdown in communications, none of his actions have been done
5 with contemptuous disregard of this Court's Orders. He is not guilty of criminal
6 contempt, and we respectfully urge the Court to refrain from making a referral for
7 criminal contempt against the Sheriff or any of his assistants. We further join in the
8 County's argument that civil contempt should not be imposed against MCSO.

9 **I. INTRODUCTION**

10 **A. Sheriff Arpaio's Background and Service to his Country.**

11 Sheriff Joe Arpaio has devoted almost his entire adult life to serving his
12 country, both in the military and as a law enforcement officer. He has served not only
13 throughout the United States, but around the world in many foreign countries. Born on
14 June 14, 1932, Sheriff Arpaio's mother, knowing that her life would be imperiled with the
15 pregnancy, lost her life giving birth to Sheriff Arpaio after refusing medical advice to get
16 an abortion. After a challenging childhood where he was moved from family to family, as
17 age 18 Sheriff Arpaio joined the U.S. Army in 1950, near the beginning of the Korean
18 conflict. He served on active duty from 1950-1953, eventually leaving active duty as a
19 Staff Sergeant. After his honorable discharge from active duty, the Sheriff continued his
20 military service for years as a member of the Army Reserve, serving as a Warrant Officer
21 in the Criminal Investigation Division from 1954-1964.

22 Sheriff Arpaio began his law enforcement career in 1954, becoming a patrol
23 officer with the Washington D.C. Police Department. He walked a beat in one of the
24 toughest areas of Washington D.C. for three years, from March of 1954 to June of 1957.
25 In June of 1957, he was hired by the Las Vegas Police Department, serving in Las Vegas
26 for six months. In November of 1957, he was hired as a Special Agent with the Federal
27 Bureau of Narcotics. He served in Chicago from 1957-1961.

28 In 1961, Sheriff Arpaio was transferred by the Federal Bureau of Narcotics

1 to serve as Special Agent in Charge in Istanbul, Turkey. During his three years of service,
2 from 1961-1964, he was involved in key investigations involving the "French
3 Connection." He was widely recognized for his service in Turkey, which covered not
4 only Turkey, but major portions of the Middle East.

5 In 1964, Sheriff Arpaio returned to the United States and was appointed
6 Special Agent in Charge of the San Antonio, Texas field office of the Federal Bureau of
7 Narcotics. He served in that assignment from October of 1964 to January of 1968.

8 In January 1968, Sheriff Arpaio was assigned to serve as Special Agent in
9 Charge of the Washington D.C. field office. Later that year, the Federal Bureau of
10 Narcotics was merged with the Bureau of Drug Abuse Control to create the Bureau of
11 Narcotics and Dangerous Drugs. After the merger, Sheriff Arpaio was transferred to
12 Maryland to serve as Deputy Regional Director of the Bureau of Narcotics and Dangerous
13 Drugs. He served in that capacity until December of 1969.

14 In December of 1969, Sheriff Arpaio was appointed Regional Director of
15 the Bureau of Narcotics and Dangerous Drugs in Mexico City. He moved to, and lived in,
16 Mexico City, having close contact with government leaders, including the President of
17 Mexico and other governmental leaders of Latin American countries, during his service.
18 He was Regional Director from January 1970 to July of 1973. His investigative
19 jurisdiction covered all of Latin America.

20 In 1973, during the Nixon presidency, a decision was made to consolidate
21 the Bureau of Narcotics and Dangerous Drugs, the Office of Drug Abuse Law
22 Enforcement, and the Bureau of Customs into a single agency, thereafter known as the
23 Drug Enforcement Administration (DEA). After this merger, Sheriff Arpaio was assigned
24 as Section Chief of Intelligence for the entire Middle East. He served in that position
25 from July 1973 to July 1974. His duties involved the collection and classification of
26 evidence and intelligence and strategic planning in the war on drugs.

27 In July of 1974, Sheriff Arpaio was appointed Deputy Regional Director of
28 DEA for the New England states, with headquarters in Boston. He held that position from

1 August 1974 to July 1978. In 1978, Sheriff Arpaio was appointed Special Agent in
2 Charge of the Arizona office of DEA. He served in that assignment for four years, from
3 1978-1982. In 1982, he retired from federal government service, ending 31 years of
4 federal service (which includes his military service). This government service took him
5 around the world and earned him great respect from American and foreign law
6 enforcement leaders.

7 His awards and achievements during his years of federal law enforcement
8 are noteworthy. Those awards include Outstanding Italian-American for Arizona, Sons of
9 Italy (2003); Anslinger Award for Counterdrug Activity, International Narcotic
10 Enforcement Officers Association (2000); Special Award of Honor from International
11 Narcotic Officers Association (1982); Award from Arizona Association of Chiefs of
12 Police (1982); Outstanding Contribution in the Field of Narcotic Enforcement Award,
13 presented by the International Narcotic Enforcement Officers Association at Minneapolis,
14 Minnesota (1981); Sustained Superior Performance Award, U.S. Drug Enforcement
15 Administration, Department of Justice (1980); Excellence of Performance Award, U.S.
16 Drug Enforcement Administration, Department of Justice (1978); Letter of
17 Commendation, U.S. Ambassador to Mexico (1973); Letter of Commendation, U.S.
18 Attorney General, Washington, D.C. (1972); Award from Mexico's Attorney General,
19 Mexico City (1971); Award from Baltimore, Maryland, Police Department (1969);
20 Special Service Award, U.S. Bureau of Narcotics & Dangerous Drugs (1968); Letter of
21 Commendation, U.S. Attorney General, Washington, D.C. (1968); Award from San
22 Antonio, Texas, Police Department (1968); Extraordinary Service Award from Office of
23 Special Investigations, U.S. Air Force, Washington, D.C. (1968); Exceptional Service
24 Award from General Director, Turkish National Police (1964); and Superior Performance
25 Awards, U.S. Treasury Department (1963, 1964, and 1967).

26 In addition, Sheriff Arpaio has been affiliated as a Life Member of the
27 International Association of Chiefs of Police; Past President and Life Member of
28 International Narcotic Enforcement Officers Association; Life Member of National

1 Sheriffs' Association; Member of the Arizona Association of Chiefs of Police; Charter
2 Member of the Association of Former Federal Narcotics Agents; Commissioner of the
3 Governor's Arizona Criminal Justice Commission; Member of the American Legion;
4 Member of the National Italian-American Foundation; and numerous other affiliations and
5 memberships in organizations since taking office as Maricopa County Sheriff on
6 January 1, 1993. He has received dozens of awards as Sheriff of Maricopa County.

7 In 1992, with the encouragement of friends and supporters, Sheriff Arpaio
8 ran for and was elected Sheriff of Maricopa County. He has been reelected as Sheriff six
9 times. In June of 2015, he will become the longest serving sheriff in Maricopa County's
10 history. His federal and state service, including military service, totals 55 years. At age
11 82, he continues to serve the people of this state even though he could have retired on
12 state and federal retirement benefits.

13 During Sheriff Arpaio's 55 years of service, he has been a key figure in the
14 criminal justice system in both federal and state governments. As part of this system, he
15 has worked with federal and state court judges, not only in Arizona, but throughout the
16 country and around the world. The Sheriff has been a staunch supporter and advocate of
17 the criminal justice system. While he may have his detractors, those who know him, and
18 have seen his service know that he would NEVER knowingly and willfully disregard an
19 Order of any court. While the First Amendment gives him every right to disagree with
20 decisions made by the United States Supreme Court, the Federal courts, the State courts,
21 and the Executive or Legislative branches of the Federal and State Government, he would
22 never, and has not in this case, knowingly, willfully, or contemptuously ignore Orders of
23 this Court. He has spent many millions of dollars, devoted thousands of man-hours of
24 training to, and demonstrated a commitment to implementing programs to work with, and
25 comply with this Court's directives.

26 **B. Procedural history**

27 On December 23, 2011, the Court entered a preliminary injunction against
28 the Sheriff's Office, enjoining MCSO and all of its officers "from detaining any person

1 based only on knowledge or reasonable belief, without more, that the person is unlawfully
2 present within the United States...” *See* Order, dated December 23, 2011 at pg. 40.

3 After the December 23, 2011 injunction, this Court issued a 142 page
4 “Findings of Fact and Conclusions of Law” on May 24, 2013, confirming the December
5 2011 injunction that “MCSO has no authority to detain people based only on reasonable
6 suspicion, or probable cause, without more, that such persons are in this country without
7 authorization.” *See* Findings of Fact, dated May 24, 2013 at pg. 4. Based upon the
8 Findings of Fact, the Court permanently enjoined MCSO from: (1) enforcing its LEAR
9 policy; (2) “using Hispanic ancestry or race as a factor in making law enforcement
10 decisions”; (3) “unconstitutionally lengthening stops unless, during the legitimate course
11 of the stop, it develops a reasonable suspicion, based on permissible factors, that a state
12 crime is being committed”; and (4) “using reasonable suspicion of unauthorized presence,
13 without more, as probable cause or reasonable suspicion that the Human Smuggling Act
14 or Employer Sanctions Law has been violated sufficient to justify an investigatory
15 detention or arrest”. *See id.* at pgs. 109, 115, 131, and 142.¹

16 On October 2, 2013, the Court issued a Supplemental Permanent Injunction
17 and Judgment Order setting forth a definition for “Full and Effective Compliance” and
18 outlining eleven separate areas that MCSO needed to address. *See* Order, dated October
19 2, 2013. The October Order required that MCSO work with a monitor to report back on
20 MCSO’s progress toward compliance with the Court’s Orders. On January 17, 2014,
21 Robert Warshaw was appointed to serve as the independent monitor. *See* Order
22 Appointing Monitor, dated January 17, 2014.

23 The Court ordered the Monitor to submit quarterly reports to the Court
24 assessing MCSO’s activities toward compliance with the Court’s Orders. *See* Order,
25 dated October 2, 2013 at pgs. 50-51. The Monitor submitted two Quarterly Reports in
26 2014—August 2014 and December 15, 2014. The Monitor also submitted an Update and

27 ¹ Because this Court did not contend that Sheriff Arpaio violated these Findings,
28 they will not be discussed in detail in this Memorandum.

1 Assessment on September 28, 2014.

2 On December 4, 2014, the Court raised the possibility of prosecuting Sheriff
3 Arpaio for criminal contempt based on alleged violations of the December 23, 2011
4 injunction. Admittedly, when the December 2011 injunction was issued, MCSO and
5 Sheriff Arpaio did not have the infrastructure in place to ensure that proper attention was
6 given to the Court's Order. Mistakes were made because of the lack of training,
7 accountability, and general oversight. The Sheriff readily concedes, and genuinely
8 regrets, that these mistakes were made. Had the programs, training, and supervision gone
9 off as he and MCSO had hoped, we would not be addressing these issues to the Court.
10 These mistakes include: (1) MCSO falling short in communicating and training personnel
11 on the implications and requirements of the Court's injunction; (2) a lack of supervision of
12 patrol and "line troop" deputies; and (3) Sheriff Arpaio's statements related to MCSO's
13 ability to detain immigrants. These mistakes are related to the issues raised by the Court
14 at the December 4, 2014 hearing.

15 Sheriff Arpaio and his team of dedicated public servants regret that these
16 mistakes were made. The mistakes were not willful, and their actions were not intended
17 to be contemptuous of the Court's Orders. MCSO has spent millions of dollars
18 implementing programs and policies directed by this Court. The Sheriff and his team
19 respect the Court's authority in mandating these changes. As evidence of their good faith,
20 we would urge the Court to focus on the numerous efforts that Sheriff Arpaio and his
21 MCSO team have made to ensure that these mistakes do not happen again, and focus on
22 the progress that Sheriff Arpaio and his team have made toward compliance with the
23 Court's Orders, as well as federal and state law.

24 **II. MCSO'S EFFORTS AT COMPLIANCE**

25 When the Court issued the injunction in December 2011, MCSO did not
26 have a specific individual or unit assigned to receive and communicate the Court's Orders
27 to other personnel. This was also one of the issues raised by the Court in its October 2013
28 Order. In response to this problem, and one of the directives issued by the Court in the

1 October, Sheriff Arpaio and his MCSO team implemented the Court Compliance and
2 Implementation Division ("CCID"). The CCID is staffed by a captain, lieutenant, four
3 sergeants, two detectives, and an administrative assistant; the captain is designated as the
4 point of contact. The CCID is responsible for creating Briefing Boards, updating and
5 disseminating new policies, keeping updated records, and acting as an internal audit
6 system to ensure that MCSO is compliant with Court Orders.

7 Additionally, in working to comply with the Court's Orders, Sheriff Arpaio
8 and MCSO have spent over \$7.5 million and recently budgeted an additional \$3.7 million
9 to obtain body cameras for their sworn deputies. Some of the other notable steps taken to
10 comply with the Court's Order include:

11 (1) Using Attestation Logs to ensure that all MCSO personnel read and
12 review the Court's Findings of Fact, Orders, and Corrective Statement. To date, 100% of
13 sworn Supervisors, 99.9% of compensated, sworn Deputies (with the exception of one on
14 leave), 100% of reserve Deputies, 99.9% of Detention Officers, and 99.9% of Detention
15 Supervisors have done this.

16 (2) Implementing policies related to Bias-Free Policing, Code of
17 Conduct, and Traffic Enforcement. Since October 2013, MCSO has issued 18 different
18 Briefing Boards on various aspects of the Courts' Order, changed its Code of Conduct,
19 and promulgated 12 new policies and procedures that were also approved by the Monitor.
20 These policies emphasize race-neutral, bias-free policing, and prohibit deputies from
21 enforcing immigration laws for unauthorized presence in the United States.

22 (3) Improved training requirements and curriculum. The Court outlined
23 three areas of training: (1) Bias-Free Policing; (2) Detentions, Arrests, and Enforcement of
24 Immigration-Related Laws; and (3) Supervisor training. In September 2014, training on
25 Bias-Free policing, and the 4th Amendment issues began, and as of December 2014, 1,083
26 posse members, 68 reserve officers, and 681 deputies (all but three who are on extended
27 leave) have been trained on the 4th and 14th Amendments and Bias-Free Policing.

28 (4) Improvements in supervision. The Court required that MCSO have a

1 1:12 ratio of supervisor to subordinate. Sheriff Arpaio promoted 35 sergeants to
2 supervisory roles, and required all supervisors to attend training to ensure uniformity and
3 effective supervision. Supervisor roles were revised to clarify their responsibilities and
4 emphasize proper supervision of their subordinates to ensure that their subordinates
5 performed their duties properly and lawfully.

6 (5) Creation of the Early Identification Unit (EIU) and Bureau of Internal
7 Oversight to identify problematic behavior, conduct self-audits, and allow supervisors to
8 intervene and correct inappropriate activity.

9 (6) Improvements in data collection by implementing a TraCS system,
10 which electronically captures data at vehicle stops, and updating deputies' Mobile Data
11 Terminals (MDT) so patrol officers can collect the data requested by the Court. This also
12 allows supervisors to review their subordinates' activities, and provides supervisors an
13 early warning system to address any potential problems.

14 (7) Establishment and implementation of the Professional Standards
15 Bureau (PSB) to address complaints and allegations of misconduct, both internally and
16 from the public.

17 **A. Quarterly Reports**

18 Further detailed evidence of MCSO's compliance is outlined in the
19 Monitor's First and Second Quarterly Reports. According to the Monitor's First Quarterly
20 Report, MCSO engaged in "several activities" with the Monitoring Team during the
21 reporting period, including policy review and developing training protocols. *See* First
22 Quarterly Report at pg. 8. Monitor Warshaw noted that, "the majority of deputies and
23 commanders are supportive of the changes being imposed by the Order and are looking
24 forward to a more well trained and professional Department." *Id.* at pg. 10.

25 The Monitor's Second Quarterly Report was completed on December 15,
26 2014. This report further described the progress made by MCSO between July 1, 2014
27 and September 30, 2014. In the Second Quarterly Report, Monitor Warshaw noted that
28 "[t]here has been a tremendous amount of activity during this reporting period—July 1 to

1 September 30, 2014—surrounding significant policy finalizations, the onset of training to
 2 these policies, and two Community meetings that showed just how important the issues
 3 contained within the Court Order are to the citizens of Maricopa County, as well as many
 4 personnel working within the Sheriff's Office.” See Second Quarterly Report, dated
 5 December 15, 2014, at pg. 4. Monitor Warshaw also noted “many motivated and
 6 professional Deputies and Supervisors” and a “shuffling of personnel and the movement
 7 and creation of Units that...bodes well for the future progress of achieving compliance
 8 with the Court Order.” *Id.*

9 The Second Quarterly Report further described several significant steps that
 10 MCSO and Sheriff Arpaio have taken to address the issues raised by the Court's
 11 December 23, 2011 injunction, including modifying policies to directly address issues
 12 surrounding racial profiling. The Monitor noted in the Second Quarterly Report that
 13 MCSO was in compliance with 14 of 87 paragraphs in the Court's Order, and that Sheriff
 14 Arpaio and MCSO are continuing to work with the Monitoring Team to develop the
 15 policies, protocols, training, and data collection systems to meet the Court's requirements.

16 **III. CRIMINAL CONTEMPT PROCEEDINGS**

17 The Court raised the possibility of criminal contempt proceedings against
 18 Sheriff Arpaio based on three areas of alleged “non-compliance” with the December 23,
 19 2011 injunction: (1) MCSO's failure to communicate the December 23, 2011 injunction to
 20 “line troops” in the Human Smuggling Unit (HSU); (2) Sheriff Arpaio's alleged claim that
 21 he (and presumably MCSO patrol officers) could continue to detain immigrants who did
 22 not have any state charges and turn them over to ICE; and (3) MCSO's failure to disclose
 23 alleged information prior to trial, including audio and video recordings, license plates,
 24 licenses, identification cards, and other materials that were found in May 2014 inside
 25 Deputy Armendariz's home.

26 To prove criminal contempt, a jury must find, beyond a reasonable doubt,
 27 that Sheriff Arpaio “willfully” disobeyed the Court's Order. See *Falstaff Brewing Corp.*
 28 *v. Miller Brewing Co.*, 702 F.2d 770, 782 (9th Cir. 1983). “Willful disobedience” is a

1 “deliberate or intended violation” of the Court’s Order, it cannot be accidental,
2 inadvertent, or negligent. *Id.* Acting in good faith is a defense to a finding of intent, but it
3 does not immunize all conduct. *See U.S. v. Thoreen*, 653 F.2d 1332, 1342 (9th Cir. 1981)
4 (attorney found to be in criminal contempt when he substituted someone for his client at
5 counsel table intending to cause misidentification; in doing so, the attorney misled the
6 Court, counsel, and witnesses, and delayed trial. The Court stated that making
7 misrepresentations to the Court is “inherently obstructive because it frustrates the rational
8 search for truth.”)

9 There is no evidence suggesting that Sheriff Arpaio intentionally or
10 deliberately violated the Court’s orders. There is no evidence that Sheriff Arpaio
11 intentionally withheld the injunction from members of HSU, directed his MCSO team to
12 continue immigration enforcement knowing that it would violate the Court’s orders, and
13 there is no evidence showing that Sheriff Arpaio willfully withheld evidence from
14 Plaintiffs in the underlying lawsuit.

15 **A. Failure to inform HSU of December 2011 injunction**

16 Sheriff Arpaio testified under oath that he only “vaguely” recall the
17 December 23, 2011 injunction. *See* Deposition of Joseph Arpaio in Case No. 2:12-cv-
18 00981-ROS, dated April 29, 2014 at pg. 65: 13-19. Sheriff Arpaio did not personally
19 know whether MCSO officers were continuing to detain immigrants in violation of the
20 Order after it was issued, because there were several members of his staff “working on
21 this issue,” and MCSO had conferred with several attorneys on the lawsuit. *Id.* at pg. 68:
22 1-18. Sheriff Arpaio is not a lawyer, and he did not directly supervise the HSU officers.
23 The responsibility for interpreting, implementing, and explaining the Court’s orders to all
24 of MCSO cannot be solely left up to him. None of this constitutes contempt or “willful
25 disobedience”.

26 Sheriff Arpaio did not willfully disobey the Court’s Orders simply because
27 the HSU did not know about the injunction, and there is no evidence that Sheriff Arpaio
28 deliberately withheld the injunction from HSU or other patrol units. At most, the failure

1 to communicate the injunction was an accident, a mistake due to a lack of communication
2 within the organization. This is not an intentional act of defiance or disobedience toward
3 the Court. *See United States v. Powers*, 629 F.2d 619, 627 (9th Cir. 1980) (finding that
4 “criminal contempt is established when there is a clear and definite order of the court, the
5 contemnor knows of the order, and the contemnor willfully disobeys the order.”)

6 For criminal contempt, it is insufficient to show that MCSO, as an entity,
7 failed to communicate the Court’s December 23, 2011 injunction to HSU—there needs to
8 be direct knowledge and direct disobedience by Sheriff Arpaio himself. Without direct
9 evidence that Sheriff Arpaio “willfully disobeyed” the Order, a prosecution for criminal
10 contempt against Sheriff Arpaio lacks merit. As a result, a referral for criminal contempt
11 against him would be unjustified. The significant investment in funds, improved training
12 for all personnel, and effort of MCSO as a whole are indicative of MCSO and Sheriff
13 Arpaio’s commitment toward compliance.

14 Although several Deputy Chiefs have also acknowledged that they did not
15 receive any information about the December 23, 2011 injunction, this was a result of a
16 since remedied lack of communication throughout the office, rather than criminal
17 contempt. Chief Sheridan, Chief Deputy and former head of the Maricopa County
18 Detention System, testified under oath that he did not remember receiving any
19 information about the December 2011 Order. *See* Deposition of Gerard Sheridan in Case
20 No. 2:12-cv-00981-ROS, dated March 27, 2014 at pg. 123: 22-25. Chief Sheridan
21 testified that he would have remembered if he had known about the injunction because he
22 would have been able to recall “something significant like this....” *Id.* at 124: 1-2. Chief
23 Sheridan noted that issues related to the *Melendres* case were “pretty much left...to Chief
24 [Brian] Sands to deal with,” and that Chief Sands was the point of contact if the County
25 Attorney needed to communicate with MCSO about the injunction. *Id.* at 124: 4-12, 12:
26 8-12. Furthermore, according to Chief Sheridan, any judicial orders directed toward
27 MCSO would likely be communicated through legal counsel for MCSO who would then
28 advise the affected Chief, Chief Deputy, or possibly Sheriff Arpaio. *Id.* at 126: 9-18.

1 Chief Sheridan did not recall any requirement that Sheriff Arpaio was supposed to
2 communicate Court Orders to patrol and other MCSO personnel. Sheriff Arpaio, as
3 previously stated, has addressed this issue by creating a specific division (CCID) to
4 address and handle Court Orders. *See id.* at 126: 19-25, 127: 1-21.

5 Lieutenant Joseph Sousa, Lieutenant in the HSU from 2007/ 2008 until
6 2012, also testified that he could not recall the injunction that was issued in December
7 2011, and that all operations within the HSU were dealt with by Chief Sands. *See*
8 Deposition of Joseph Sousa in Case No. 2:12-cv-00981-ROS, dated February 4, 2014 at
9 pg. 171: 21-25, 118: 21-25, 119: 1-22. Lieutenant Sousa never testified that Sheriff
10 Arpaio was responsible for distributing court rulings, or training the HSU on compliance
11 with Court Orders.

12 The critical standard for evaluating these mistakes should focus on MCSO's
13 acknowledgement that mistakes were made, and that MCSO has since implemented
14 policies and procedures to ensure that these communication problems do not occur in the
15 future. MCSO has, in fact, learned from the mistakes in 2011, and has significantly
16 improved the procedures for educating MCSO personnel regarding court orders both up
17 and down the chain of command.

18 **B. Statements related to detention of immigrants.**

19 The second issue raised by the Court was Sheriff Arpaio's statements after
20 the December 2011 injunction that he could continue to detain immigrants for ICE
21 without any more than reasonable suspicion that they were in the country illegally. In
22 making these statements, Sheriff Arpaio did not mean to defy the Court's position or
23 encourage or persuade his deputies to violate the law. *See Kasper v. Brittain*, 245 F.2d
24 92, 95 (6th Cir. 1957) (the First Amendment does not protect speech that was "clearly
25 calculated to cause a violation of the law"). Sheriff Arpaio's statements cannot form the
26 basis for contempt proceedings unless the Government can prove that the statement(s)
27 presented a "clear and present danger to the administration of justice." *See Wood v.*
28 *Georgia*, 370 U.S. 375, 383-84, 82 S.Ct. 1364, 8 L.Ed.2d 569 (1962) (citations omitted).

1 In other words, before the Court can sanction Sheriff Arpaio for stating that he could
 2 continue to detain immigrants without state charges in order to turn them over to ICE, the
 3 Court must find, beyond a reasonable doubt, that there is an “imminent, not merely a
 4 likely, threat to the administration of justice. The danger must immediately imperil.” *Id.*
 5 (citing *Craig v. Harney*, 331 U.S. 367, 376, 67 S.Ct. 1249, 1255, 91 L.Ed. 1546 (1947)).

6 Sheriff Arpaio’s statements did not create an “immediate peril” or
 7 “imminent threat” to the administration of justice. Sheriff Arpaio did not direct his patrol
 8 officers or deputies to violate the law or defy the Court’s injunction and detain immigrants
 9 and/ or violate their constitutional rights. Sheriff Arpaio’s statements did not direct his
 10 deputies to engage in unlawful conduct. Without more, the statements alone, are therefore
 11 insufficient to justify a proceeding for either civil or criminal contempt. In point of fact,
 12 and practice, immigrants illegally in the United States are not being detained without state
 13 charges in order to turn them over to ICE.

14 **C. Alleged non-disclosure of discoverable materials.**

15 The third issue raised by the Court involves allegedly discoverable
 16 materials. There are two separate concerns, the first involving materials found in former
 17 Deputy Ramon Armendariz’s home, and the second involving recordings of various traffic
 18 stops made by other MCSO deputies.

19 **1. Materials found in Armendariz’s home.**

20 On May 8, 2014, officers went to former MCSO Deputy Ramon Charley
 21 Armendariz’s home to serve a felony arrest warrant after he had failed to comply with
 22 criminal court orders. Following a standoff, Armendariz hung himself and was found
 23 dead in his home. Officers searched his home and found several items related to traffic
 24 stops, and possibly related to criminal cases, including license plates, driver’s license
 25 information, traffic stop audio and video, and identification cards.

26 A sheriff can only be liable for “official acts” of his deputy. *See Dogarin v.*
 27 *Connor*, 6 Ariz.App.473, 477, 433 P.2d 653 (App. 1967) (liabilities of sheriff limited by
 28 “official” acts of deputy). “Official acts are done under color and virtue of his office. *See*

1 *Miles v. Wright*, 22 Ariz. 73, 194 P. 88 (1920). Here, no evidence exists to demonstrate
2 that the Sheriff actually knew about Armendariz's actions or the property he confiscated
3 and improperly processed until May 2014, let alone intentionally or knowingly violated
4 any Court order relevant to Armendariz's actions. The Sheriff does not condone any
5 illegal or out of policy conduct of any of his deputies. Moreover, if he was aware that any
6 conduct violated MCSO policies, or that was illegal, Sheriff Arpaio would ensure that
7 proper investigations by MCSO and/or the Maricopa County Attorney would occur, and
8 that the appropriate, corresponding discipline would result.

9 Sheriff Arpaio did not "willfully disobey" the Court simply because of
10 Armendariz's alleged misconduct. Sheriff Arpaio did not claim, and cannot claim to
11 know what Armendariz had in his house, or whether it was relevant to Plaintiffs' lawsuit.
12 The allegation that several "immigration-related" items were found in Armendariz's home
13 which "may well have limited" Plaintiffs' presentation of evidence at trial is simply too
14 speculative to justify a prosecution for criminal contempt or form the basis of a civil
15 contempt proceeding. To allege that Sheriff Arpaio should be found in contempt for an
16 alleged discovery violation based on a "rogue" officer's wrongdoing is unsubstantiated
17 and relies on speculation. Any wrongdoing related to Armendariz, therefore, should not,
18 and cannot be imputed to Sheriff Arpaio for purposes of moving forward with criminal
19 contempt proceedings against the Sheriff.

20 The magnitude of the Maricopa County Sheriff's Office and their operations
21 must be also considered by the Court before finding Sheriff Arpaio liable for
22 Armendariz's actions. Maricopa County is the fourth largest county in the United States,
23 and has a total area of 9,224 square miles. The County is currently divided into six
24 geographical areas, referred to as Districts. Districts are staffed by a District Commander
25 (Captain), Deputy Commander (Lieutenant), uniformed sergeants and patrol deputies,
26 detectives, and administrative staff. Districts overlap city agencies, as the Sheriff's Office
27 has concurrent jurisdiction in these areas. It would be unfair to hold the Sheriff, or any of
28 his Chiefs, responsible for the actions of one rogue deputy when one considers the size of

1 the office, and number of employees—consisting of 524 deputies, 126 Sergeants, 37
 2 Lieutenants, 24 Captains, 2059 Detention officers, 658 staff, and 1,083 active posse
 3 members and 89 reserve officers for a total of 4,601 employees.

4 2. Sheriff Arpaio has made good faith efforts to obtain recordings by
 5 other MCSO deputies.

6 The Court also expressed concern about the non-disclosure or recent
 7 discovery of recordings made by other MCSO officers. MCSO deputies were not required
 8 to, but sometimes recorded traffic stops. Upon learning that this information may still
 9 exist, the Court required MCSO to implement a plan to obtain these recordings. MCSO
 10 began working diligently to obtain this information, and due to the scope and
 11 investigatory nature of the request, MCSO has worked closely with the Professional
 12 Standards Bureau (“PSB”) and Monitor to come up with an appropriate plan that did not
 13 infringe upon the Law Enforcement Officer’s Bill of Rights. To date, they have recovered
 14 over 8,900 video clips, including over 4,000 from Armendariz and over 1,650 items of
 15 evidence. MCSO’s timely investigation does not demonstrate Sheriff Arpaio’s alleged
 16 “willful disobedience” of the Court’s Order or any intent to defy the Court’s request.

17 IV. 18 U.S.C. §402

18 The Court raises 18 U.S.C. §402 as a possible remedy for criminal
 19 contempt. This allows the Court to impose a fine, imprisonment, or both if a defendant is
 20 found guilty of criminal contempt. However, in order to find Sheriff Arpaio guilty of
 21 criminal contempt, *the Government must prove, beyond a reasonable doubt, the*
 22 *Sheriff’s intent to willfully disobey the Court’s order.* See *Falstaff Brewing Corp.*, 702
 23 F.2d at 782 (9th Cir. 1983), see also *In re D.I. Operating Co.*, 240 F.Supp.672 (D.C. Nev.
 24 1965) (willfulness is an essential element of offense of criminal contempt) (emphasis
 25 added)

26 Sheriff Arpaio did not willfully disobey, or have any intent to defy the
 27 Court’s December 2011 injunction, and there simply is no evidence to show that Sheriff
 28 Arpaio willfully disobeyed the injunction, or intended to ignore and defy the Court’s

1 December 2011 directive. Upon learning about the injunction, Sheriff Arpaio relied on
2 his legal counsel and subordinates to relay the information to the other officers; he did not
3 simply ignore or disobey it. Any failure to communicate the injunction was accidental
4 and an unintentional mistake. Since then, Sheriff Arpaio and the rest of his MCSO team
5 have diligent worked to remedy these issues and come into compliance with the Court's
6 Orders. And, as reported by the Monitor, MCSO has made significant progress toward
7 full compliance and the attitudes of those within MCSO "bode well" for future
8 compliance. As such, there is insufficient evidence to prove, beyond a reasonable doubt,
9 that Sheriff Arpaio is guilty of criminal contempt.

10 **V. THE CHALLENGES FROM THE PAST**

11 Sheriff Arpaio and his team of chiefs never intended to disobey or defy the
12 Orders of this Court or any other court. He is the Sheriff of the largest county in the state
13 and is responsible for overseeing over 4,000 employees. When the Court issued the
14 December 2011 injunction, the Sheriff acknowledged it, and relied upon his legal team
15 and others to distribute the information accordingly. He did not know how the
16 information was disseminated or whether it was actually passed down. When the Sheriff
17 learned that this Court's Orders were not effectively communicated to personnel at all
18 levels of the department, he implemented new communication protocols to ensure that
19 future orders of this Court would be effectively relayed throughout MCSO.

20 In connection with his responsibilities as Sheriff, Sheriff Arpaio also
21 engages in public speaking to maintain and garner support from the community. His
22 statements commenting on the Court's Orders or illegal immigration were not intended to
23 direct his deputies to disobey the law. His statements were not intended to stir up
24 discontent within the community, or promote illegal activities. Sheriff Arpaio would not,
25 and did not make these statements with the intent to willfully disobey the Court's Orders.
26 There is rarely a decision from the United States Supreme Court, the 9th Circuit Court of
27 Appeals, or Federal Courts within Arizona, that is beyond the bounds of criticism. The
28 very essence of our First Amendment privileges of speech guarantee to each individual,

1 particularly an elected official charged with protecting the public safety, the right to voice
2 opinions or disagreements. Sheriff Arpaio respects this Court, and he respects the
3 authority of this Court. For 55 years, cases prepared for prosecution by Sheriff Arpaio
4 have undergone judicial scrutiny. That is the very essence of our judicial system – the
5 final word rests with the Court, and Sheriff Arpaio respects and supports the separation of
6 powers, and the role that the courts play in our free democracy.

7 Sheriff Arpaio should not be responsible for the actions of a “rogue” officer.
8 He did not know, and could not have known that Armendariz was allegedly violating the
9 law and possibly improperly processing confiscated items from traffic stops. Upon
10 discovering this information, Sheriff Arpaio directed MCSO to begin gathering and
11 review all audio and video recordings. This is a tedious task that requires filtering through
12 thousands of recordings. Sheriff Arpaio’s top aides directed this investigation, and
13 implemented several other significant changes to MCSO training, policies, data collection,
14 and other protocols to ensure more accountability and compliance with the Court’s Order.
15 This is not criminal contempt and cannot justify charging him with criminal contempt.

16 Finally, Maricopa County is not paying the legal fees of legal counsel for
17 Sheriff Arpaio, Chief Sheridan, Chief MacIntyre, or others in this criminal contempt
18 inquiry. Each of the attorneys making appearances are looking to their clients for
19 payment of their legal fees.

20 **VI. CONCLUSION**

21 Sheriff Arpaio would encourage this Court to refrain from proceeding in the
22 direction of making a criminal referral to the United States Attorney’s Office. While he
23 can understand the Court’s frustration regarding the actions of a rogue deputy, those
24 actions by former Deputy Armendariz represent an aberration, not the culture, of MCSO.
25 **More importantly, the rogue actions of Armendariz certainly do not justify any**
26 **criminal contempt by Sheriff Arpaio.**

27 A criminal referral and possible federal criminal jury trial would have
28 devastating consequences to the efficient operation of the Maricopa County Sheriff’s

Office. It would not only bring personal financial hardship to Sheriff Arpaio and his team of leaders at MCSO, but it would be grossly unfair—MCSO has made significant changes to their training, policies, supervision, and chain of command, which clearly demonstrates their commitment toward complying with the Court's Orders and directives. It would, in counsel's opinion, severely undermine these positive changes and unfairly tarnish the good name and legacy of a public servant who has given over a half century of extraordinary service to the citizens of this country.

The Sheriff and his team have certainly received the message from the Court, loud and clear. The attitude of MCSO is not one of defiance or disregard to the Court's Orders; rather, there is a clear commitment to implement the directives of this Court through training and requirements of compliance. We would urge the Court to not make a criminal contempt referral and to refrain from finding civil contempt, and allow the Sheriff and his team to continue implementing the Court's directives, and to take note of all that has been done to date, and will be done in the future.

RESPECTFULLY SUBMITTED this 9th day of January, 2015.

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

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