

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

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

Plaintiffs,

v.

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

Defendants.

No. CV-07-02513-PHX-GMS

**ORDER**

Pending before the Court are Plaintiffs' Motion for Expedited Discovery (Doc. 862) and Defendants' Motion to Set a Rule 16 Settlement Conference (Doc. 867). For the reasons set forth below, Plaintiffs' Motion (Doc. 862) is **GRANTED**. Defendants' Motion (Doc. 867) is **GRANTED** in part and **DENIED** in part. At this time, the setting of a pre-trial conference shall not affect the deadlines or schedules set forth in this or any other Order of the Court.

**IT IS HEREBY ORDERED** as follows:

1. Defendants are ordered to produce the following documents, and any associated privilege logs, by **February 27, 2015**. Plaintiffs have requested documents that are relevant to the allegations that Defendants and MCSO personnel violated this Court's Preliminary Injunction by detaining persons based solely on their belief that the individuals were unlawfully present in the United States and by using Hispanic

1 appearance as a factor in forming reasonable suspicion or probable cause to believe  
2 persons had committed a crime. The documents sought are also relevant to the Court's  
3 ability, through its civil contempt power, to fashion an appropriate remedy for any such  
4 violations. The request is narrowly tailored to the alleged contemptuous conduct.

- 5 a. Copies of identification documents seized by MCSO personnel from  
6 apparent members of the Plaintiff Class.
- 7 b. All documents relating to any individuals who were the subject of any U.S.  
8 Immigrations and Customs Enforcement (ICE) or U.S. Customs and Border  
9 Protection (CBP) inquiry and/or individuals who were detained by MCSO  
10 after December 23, 2011 based upon suspected unlawful presence in the  
11 United States, and who were not charged with or cited for any crime.
- 12 c. All documents relating to information concerning the circumstances and  
13 length of any detention described in (b) above, including, but not limited to,  
14 MCSO incident reports, departmental reports, field interview cards, traffic  
15 stop data collection forms, CAD data and recordings or MDT records,  
16 video or audio recordings, and officer or supervisor notes.
- 17 d. All documents relating to communications, in any form, between MCSO  
18 and CBP or ICE after December 23, 2011 concerning the immigration  
19 status or custody status of any individual in MCSO custody or detention.
- 20 e. All documents in Defendants' possession or within their control relating to  
21 the Court's December 23, 2011 preliminary injunction order and/or the  
22 LEAR policy, as defined in the Court's order, including all documents that  
23 mention the preliminary injunction order or its substance that were sent or  
24 received by any employee or agent of MCSO and any documents relating to  
25 policies or guidance regarding contact with ICE or CBP regarding  
26 individuals stopped or detained by MCSO other than in the jail context.

27 2. Plaintiffs are granted leave to propound up to ten written interrogatories.

28 All interrogatories shall be served by **February 27, 2015** and must be completed no later

1 than **March 13, 2015**.

2 3. The Plaintiffs are authorized to take up to ten depositions without further  
3 Order of the Court. Depositions shall be limited to seven hours as provided in Rule  
4 30(d)(2) of the Federal Rules of Civil Procedure. If the Defendants or non-parties that  
5 are subjects of the Order to Show Cause wish to take depositions in advance of the  
6 evidentiary hearing, they should immediately request authorization by the Court. All  
7 depositions are to be concluded by **March 27, 2015**.

8 4. The parties and non-party contemnors are ordered to disclose their full and  
9 complete witness lists for the evidentiary hearing to be held on April 21–24, 2015 by  
10 **March 13, 2015**.

11 5. Plaintiffs' request to subpoena non-party witnesses for documents (1)  
12 relating to the Court's December 23, 2011 Order and the LEAR policy, (2) describing  
13 their duties at the MCSO during the period of time that includes December 23, 2011,  
14 and/or (3) relating to the use of video- or audio-recording devices by MCSO personnel on  
15 a traffic stop between 2007 and the present is **GRANTED**. This request is narrowly  
16 tailored to generating information relevant to the grounds on which the contemnors have  
17 been ordered to show cause why they should not be held in civil contempt.

18 6. Plaintiffs' request to serve a subpoena *duces tecum* on the U.S. Department  
19 of Homeland Security for documents relating to incidents where Defendants contacted  
20 ICE or CBP about an individual in MCSO custody or detention after December 23, 2011  
21 is **GRANTED**. This request is narrowly tailored to the production of documents relevant  
22 to the nature and magnitude of Defendants' alleged non-compliance with this Court's  
23 orders, as well as to the efficacy of any remedies for such non-compliance that this  
24 Court may fashion.

25 7. Defendants are ordered to produce any outstanding documents responsive  
26 to Plaintiffs' requests for documents dated May 21, 2014 and December 3, 2014, with an  
27 accompanying privilege log for any withheld documents, by **February 27, 2015**.  
28 (*Reproduced at* Doc. 862, Exs. A, B; *see also* Doc. 872.) Any supplemental responsive

1 documents must be disclosed no later than April 14, 2015.<sup>1</sup>

2 Defendants MCSO and Sheriff Arpaio, in conjunction with Sheriff Arpaio's  
3 specially appearing counsel, have requested a Rule 16 Conference over which this Court  
4 will preside. In their initial Motion the Defendants denominate the requested conference  
5 as a "settlement" conference; they appear to slightly modify this request in their Reply.  
6 (*See* Docs. 867, 869.) Plaintiffs have indicated their willingness to "confer with  
7 Defendants and report to the Court any progress and whether there is a realistic  
8 possibility of resolution." (Doc. 868 at 3.) MCSO and Sheriff Arpaio, in their Reply,  
9 apparently adopt this suggestion to separately discuss settlement options and further  
10 assess whether some litigation matters can be simplified and eliminated, outside of court.  
11 The Court is not averse to scheduling a pre-hearing conference to discuss issues if the  
12 Parties would find it useful, and to the extent that it would benefit Defendants to schedule  
13 it earlier rather than later, (*see* Doc. 869 at 2), such a hearing is scheduled on **Thursday,**  
14 **February 26, 2015 at 1:30pm.**

15 Nevertheless, at this point and without further consideration and discussion with  
16 the Parties of the matters set forth below, the Court declines to structure the hearing as a  
17 confidential settlement conference at which it would act in a mediating role. While  
18 willing to facilitate settlement between the parties if such a possibility exists, the Court  
19 has the following concerns about its own participation in a settlement conference:

20 First, while a confidential setting may well lead to "productive settlement  
21 discussions," court proceedings generally are open to the public—although settlement  
22 conferences are, as a matter of practice, not. Prior to determining whether there is a  
23 reason to hold a confidential settlement conference, the Court desires that the parties  
24 confer on the matter to set forth whether settlement is a realistic possibility and whether

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26 <sup>1</sup> The Court understands that further documents to be provided by Defendants to  
27 Plaintiffs are set forth by Plaintiffs in Doc. 872. Such documents do not seem to be  
28 included in those documents identified by Defendant in Doc. 865. To the extent that the  
documents identified in Doc. 872 have not been provided to Plaintiffs they shall be  
immediately provided. To the extent that Defendants have fully provided such  
documents, they shall immediately so inform the Plaintiffs and the Court.

1 such discussions would be aided by a non-public proceeding with the Court that can be  
2 justified consistent with Ninth Circuit law. *See Kamakana v. City & Cnty. of Honolulu*,  
3 447 F.3d 1172, 1178 (9th Cir. 2006) (discussing presumption of common law right of  
4 access to the courts and judicial records).

5 Second, to the extent that Defendants seek to settle the civil contempt proceedings  
6 against the parties and non-parties represented by Ms. Iafrate, the Court declines to  
7 participate in a settlement conference absent a discussion with all parties and potential  
8 parties of the possible ramifications of such participation. Whether the individuals and  
9 entities charged committed civil contempt is a matter to be decided by the Court. *Int'l*  
10 *Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 827 (1994). The Ethics  
11 Advisory Opinions note that a judge may participate in settlement conferences and  
12 subsequently determine the issues in dispute if no settlement occurs; however, additional  
13 concerns arise when the matter will be tried to the judge as opposed to a jury. *See Guide*  
14 *to Judiciary Policies and Procedures*, Vol. 2, Ch. 2 at 95-1 (Advisory Opinion No. 95). In  
15 light of the foregoing, the Court suggests that the parties consider the appointment of a  
16 Magistrate Judge from this district for settlement facilitation, all of whom are  
17 experienced and skilled in facilitating settlements. The Court is, however, able to confer  
18 with the parties on discrete issues as necessary to facilitate settlement prior to holding  
19 such a conference. The Court, of course, would have to approve any settlement agreed to  
20 among the parties and potential parties.

21 Third, to the extent that Defendants seek to settle potential criminal contempt  
22 liability, as the joinder of Mr. McDonald in the request suggests, the Court queries  
23 whether any settlement of criminal contempt charges could be appropriately effectuated  
24 without the presence of the United States Attorney's Office. In criminal contempt  
25 proceedings, the Court must appoint a federal prosecutor to try the case. Fed. R. Crim. P.  
26 42. It would, therefore, appear that the United States Attorney, or a representative thereof,  
27 is a necessary participant at any formal settlement conference.  
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1 With those caveats in mind, the Court **ORDERS** the Parties and specially  
2 appearing non-parties to appear for a pre-trial conference on **Thursday, February 26,**  
3 **2015 at 1:30 p.m.** At this time, the Court will address the matters alluded to in  
4 Defendants' Motion to Set a Rule 16 Settlement Conference as well as any other issues or  
5 discovery disputes that require the Court's attention.

6 The Clerk of the Court is **DIRECTED** to provide a copy of this Order to the  
7 United States Attorney.

8 Dated this 12th day of February, 2015.

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11 Honorable G. Murray Snow  
12 United States District Judge  
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