

1 Cecillia D. Wang (*Pro Hac Vice*)  
2 cwang@aclu.org  
3 ACLU Foundation  
4 Immigrants' Rights Project  
5 39 Drumm Street  
6 San Francisco, California 94111  
7 Telephone: (415) 343-0775  
8 Facsimile: (415) 395-0950

9 Daniel J. Pochoda  
10 depochoda@acluaz.org  
11 ACLU Foundation of Arizona  
12 3707 N. 7th St., Ste. 235  
13 Phoenix, AZ 85014  
14 Telephone: (602) 650-1854  
15 Facsimile: (602) 650-1376

16 *Attorneys for Plaintiffs (Additional attorneys*  
17 *for Plaintiffs listed on next page)*

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

20 Manuel de Jesus Ortega Melendres, ) CV-07-2513-PHX-GMS  
21 et al., )

22 Plaintiff(s), )

23 v. )

24 Joseph M. Arpaio, et al., )

25 Defendants(s). )

26 **PLAINTIFFS' FURTHER**  
27 **RESPONSE IN OPPOSITION**  
28 **TO MICHAEL ZULLO'S**  
**MOTION PRO SE FOR**  
**PROTECTIVE ORDER**

1 Additional Attorneys for Plaintiffs:

2 Andre I. Segura (*Pro Hac Vice*)  
3 asegura@aclu.org  
4 ACLU Foundation  
5 Immigrants' Rights Project  
6 125 Broad Street, 17th Floor  
7 New York, NY 10004  
8 Telephone: (212) 549-2676  
9 Facsimile: (212) 549-2654

10 Anne Lai (*Pro Hac Vice*)  
11 alai@law.uci.edu  
12 401 E. Peltason, Suite 3500  
13 Irvine, CA 92697-8000  
14 Telephone: (949) 824-9894  
15 Facsimile: (949) 824-0066

16 Stanley Young (*Pro Hac Vice*)  
17 syoung@cov.com  
18 Michelle L. Morin (*Pro Hac Vice*)  
19 mmorin@cov.com  
20 Hyun S. Byun (*Pro Hac Vice*)  
21 hbyun@cov.com  
22 Covington & Burling LLP  
23 333 Twin Dolphin Drive  
24 Suite 700  
25 Redwood Shores, CA 94065-1418  
26 Telephone: (650) 632-4700  
27 Facsimile: (650) 632-4800

28 Tammy Albarran (*Pro Hac Vice*)  
talbarran@cov.com  
Lauren E. Pedley (*Pro Hac Vice*)  
lpedley@cov.com  
Rebecca A. Jacobs (*Pro Hac Vice*)  
rjacobs@cov.com  
Covington & Burling LLP  
One Front Street  
San Francisco, CA 94111  
Telephone: (415) 591-7066  
Facsimile: (415) 955-6566

Priscilla G. Dodson (*Pro Hac Vice*)  
pdodson@cov.com  
Covington & Burling LLP  
One CityCenter  
850 Tenth Street, NW  
Washington, DC 20001-4956  
Telephone: (202) 662-5996  
Facsimile: (202) 778-5996  
Jorge M. Castillo (*Pro Hac Vice*)  
jcastillo@maldef.org  
Mexican American Legal Defense and  
Educational Fund  
634 South Spring Street, 11th Floor  
Los Angeles, California 90014  
Telephone: (213) 629-2512  
Facsimile: (213) 629-0266

1           In response to Michael Zullo's Motion Pro Se for Protective Order, Dkt. 1508,  
2 and pursuant to the Court's invitation in its Order, Dkt. 1506, Plaintiffs submit these  
3 additional observations regarding *United States v. Hubbell*, 530 U.S. 27 (2000). For  
4 the reasons stated in Plaintiffs' October 30, 2015 Response in Opposition to Michael  
5 Zullo's Motion for Extension of Time to Retain Counsel, Dkt. 1507 (which is  
6 incorporated by reference here), the documents listed on Jones Skelton's log, Dkt.  
7 1507-6, belong to MCSO. Their production by MCSO's attorneys would involve no  
8 potential self-incrimination by Mr. Zullo.

9           But, even if those documents were somehow deemed to be owned by Mr. Zullo,  
10 their production by the Jones Skelton firm would still not constitute potential self-  
11 incrimination by Mr. Zullo. It is uncontested that, as of now, Jones Skelton does not  
12 represent Mr. Zullo. Mr. Zullo has made it clear that Jones Skelton's production  
13 would not be on his behalf. The *Hubbell* Court's observation that "that the act of  
14 producing documents in response to a subpoena may have a compelled testimonial  
15 aspect," 530 U.S. at 36, is therefore irrelevant to the present situation, since Mr. Zullo  
16 would not be producing the documents under compulsion of a subpoena. Rather,  
17 Jones Skelton would be producing the documents in response to the subpoena directed  
18 toward it. A claim by Mr. Zullo that Jones Skelton misled him in order to obtain the  
19 documents, which Mr. Zullo makes in Dkt. 1508, would not limit Jones Skelton's  
20 obligations under the subpoena served on it in this lawsuit and would not affect the  
21 obligation of Sheriff Arpaio and MCSO to produce relevant documents that they,  
22 through Jones Skelton, have obtained from Mr. Zullo. *See, e.g., Fisher v. United*  
23 *States*, 425 U.S. 391, 401-414 (1976) (explaining that the Fifth Amendment protects  
24 against compelled self-incrimination, not the disclosure of private information); *Couch*  
25 *v. United States*, 409 U.S. 322, 335-36 (1973) (no Fourth or Fifth Amendment claim  
26 by taxpayer over documents in accountant's possession can prevail where there exists  
27 no legitimate expectation of privacy and no semblance of government compulsion  
28 against the person of the accused); *S.E.C. v. Ryan*, 747 F.Supp.2d 355, 363-64

1 (N.D.N.Y. 2010) (court-appointed receiver's access to law firm's files concerning  
2 investment company and broker named in Securities and Exchange Commission  
3 enforcement action did not implicate broker's Fifth Amendment right against self-  
4 incrimination, since court's request to provide discovery was directed to firm rather  
5 than broker, firm did not represent broker in instant matter, and business records at  
6 issue were voluntarily prepared); *In re Special November 1975 Grand Jury (Subpoena*  
7 *Duces Tecum Issued to Peat, Marwick, Mitchell & Co.)*, 433 F.Supp. 1094, 1096 (N.D.  
8 Ill. 1977) (where a grand jury is seeking production of documents, only the person in  
9 actual possession of documents may assert a personal privilege not to disclose through  
10 a motion to quash or to modify a subpoena; an owner of a document may not assert  
11 such a privilege in order to prevent disclosure by another person who is then in  
12 possession of the documents in question).<sup>1</sup>

13 There is also a basic fairness concern. Mr. Zullo, Sheriff Arpaio and Chief  
14 Deputy Sheridan have apparently conferred among themselves about their testimony in  
15 this case regarding the matters discussed in the documents at issue. See Dkt. 1507-5 at  
16 4 (Mr. Zullo stating, with regard to testimony by Sheriff Arpaio and Chief Sheridan  
17 that the information provided by Mr. Montgomery was "junk," that "I had that  
18 conversation with them yesterday and advised them that that is not what I'm going to  
19 testify to"). It would be inequitable for Mr. Zullo, Sheriff Arpaio and Chief Deputy  
20

---

21 <sup>1</sup> Mr. Zullo does not have, and has never had, a legitimate expectation of privacy as  
22 against Sheriff Arpaio and MCSO in any communications with the Jones Skelton firm,  
23 and therefore had no reasonable expectation of independent or disinterested  
24 representation of his personal interests by that firm. See *United States v. Ruehle*, 583  
25 F.3d 600 (9th Cir. 2009). Mr. Zullo could not have had any legitimate expectation that  
26 Sheriff Arpaio and MCSO would violate their discovery obligations by withholding  
27 relevant documents that he gave to them through Jones Skelton. This is particularly  
28 true where Mr. Zullo gave those documents to Jones Skelton so that Jones Skelton  
could do a privilege review and then give any non-privileged documents to Plaintiffs  
pursuant to Plaintiffs' subpoena to Mr. Zullo. To the extent Mr. Zullo wishes to assert  
claims of any sort against Jones Skelton or Maricopa County, that is a separate matter  
and is irrelevant to these proceedings.

1 Sheridan to be able to refer to the documents in order to help shape their testimony in  
2 this case without Plaintiffs also being able to see those same documents.

3 The Court should therefore order Jones Skelton to produce the documents listed  
4 on its log, Dkt. 1507-6.

5

6 RESPECTFULLY SUBMITTED this 2nd day of November, 2015.

7

8

By: /s/ Stanley Young

9

Cecillia D. Wang (*Pro Hac Vice*)

10

Andre I. Segura (*Pro Hac Vice*)

11

ACLU Foundation

12

Immigrants' Rights Project

13

Daniel Pochoda

14

ACLU Foundation of Arizona

15

Anne Lai (*Pro Hac Vice*)

16

Stanley Young (*Pro Hac Vice*)

17

Tammy Albarran (*Pro Hac Vice*)

18

Michelle L. Morin (*Pro Hac Vice*)

19

Lauren E. Pedley (*Pro Hac Vice*)

20

Hyun S. Byun (*Pro Hac Vice*)

21

Priscilla G. Dodson (*Pro Hac Vice*)

22

Rebecca A. Jacoms (*Pro Hac Vice*)

23

Covington & Burling, LLP

24

Jorge M. Castillo (*Pro Hac Vice*)

25

Mexican American Legal Defense and  
Educational Fund

26

*Attorneys for Plaintiffs*

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on November 2, 2015 I electronically transmitted the attached document to the Clerk’s office using the CM/ECF System for filing and caused the attached document to be served via the CM/ECF System on all counsel of record.

/s/ Stanley Young