

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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4	Manuel de Jesus Ortega Melendres,)	
	et al.,)	
5)	
	Plaintiffs,)	No. CV 07-2513-PHX-GMS
6)	
	vs.)	Phoenix, Arizona
7)	November 6, 2015
	Joseph M. Arpaio, et al.,)	3:35 p.m.
8)	
	Defendants.)	
9)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE G. MURRAY SNOW
(Motion Hearing)

22 Court Reporter: Gary Moll
23 401 W. Washington Street, SPC #38
24 Phoenix, Arizona 85003
(602) 322-7263

25 Proceedings taken by stenographic court reporter
Transcript prepared by computer-aided transcription

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A P P E A R A N C E S

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Also present:

Mr. Michael Zullo

P R O C E E D I N G S

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THE COURT: Please be seated.

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THE CLERK: This is CV 07-2513, Melendres, et al., v. Arpaio, et al., on for oral argument.

15:35:08

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Counsel, please announce your appearances.

7

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MR. YOUNG: Good afternoon, Your Honor. Stanley Young, Covington & Burling, for plaintiffs.

9

THE COURT: Good afternoon.

10

MR. POCHODA: Dan Pochoda, ACLU of Arizona, for plaintiffs.

15:35:16

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12

MR. ZULLO: Michael Zullo representing Michael Zullo.

13

THE COURT: Good afternoon, Mr. Zullo.

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MS. IAFRATE: Good afternoon, Your Honor. Michele Iafrate on behalf of Sheriff Arpaio and the alleged nonparty contemnors.

15:35:28

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MR. WOODS: Your Honor, I'm Terry Woods. I'm representing nonparties Stutz and Liddy.

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MR. MURDY: Good afternoon, Your Honor. Craig Murdy on behalf of retired Chief Sands.

15:35:41

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21

THE COURT: Good afternoon.

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MS. JOHNSTON: Good afternoon, Your Honor. Maureen Johnston on behalf of the United States.

24

THE COURT: Good afternoon.

25

MR. WALKER: Good afternoon, Your Honor. This is

15:35:52

1 Richard Walker on behalf of Maricopa County.

2 THE COURT: Good afternoon, Mr. Walker.

3 Do we have anybody else on the line?

4 MS. WANG: Yes, Your Honor. It's Cecillia Wang from
5 the ACLU for plaintiffs. Good afternoon. 15:36:02

6 THE COURT: Good afternoon.

7 MR. McDONALD: Your Honor, Mel McDonald making a
8 special appearance for Sheriff Joe Arpaio.

9 MR. MASTERSON: Good afternoon, Judge. John
10 Masterson, Joe Popolizio for Sheriff Arpaio and the individual 15:36:17
11 contemnors.

12 THE COURT: Good afternoon.

13 MS. MORIN: Good afternoon. This is Michelle Morin
14 with Covington for plaintiffs.

15 THE COURT: Good afternoon. 15:36:30

16 Do we have everybody who's on the phone?

17 All right. Mr. Zullo, you've been in court before?

18 MR. ZULLO: Yes, sir.

19 THE COURT: Okay. I usually have folks come up right
20 here to this podium to address me. And as I said, this is your 15:36:41
21 motion for protective order, so you get the first and the last
22 chance to address me, so please -- please do so.

23 MR. ZULLO: This it? This one?

24 THE COURT: It is. Thank you.

25 MR. ZULLO: Your Honor, obviously, I'm not an 15:36:59

1 attorney. Obviously, there is probably little chance that I'm
2 going to win against arguing those guys.

3 And also, at the risk of at this juncture having to
4 represent myself, I don't want to venture off into that gray
5 area of testifying and not knowing I'm testifying, so what I'd 15:37:17
6 like to do is just read a statement --

7 THE COURT: You may do so.

8 MR. ZULLO: -- to the Court. Thank you.

9 Your Honor, this Court has said a number of times on
10 the record that the Court is considering referencing this 15:37:30
11 matter to the U.S. Attorney, and even has gone as far as
12 inviting them into the courtroom.

13 The Court has invited Raphael Gomez into this
14 courtroom, someone intimately familiar with Mr. Montgomery.
15 Couple that with the ACLU's threatening claims; the 15:37:45
16 U.S. Attorney, to my understanding, not interested in giving me
17 even a hint of immunity, even though I didn't make that
18 request; you, yourself, Your Honor, stating on the record that
19 you're not inclined to grant me any type of immunity, I believe
20 I have some serious, legitimate Fifth Amendment and due-process 15:38:03
21 concerns.

22 In accordance with the ruling by the Supreme Court
23 in U.S. versus Hubbell, even turning over a list that
24 identifies, even with reasonable particularity, which is what I
25 would testify to if I was compelled to testify, if forced to 15:38:21

1 testify, would be a violation of my Fifth Amendment rights.
2 Just the production of a list has already violated my
3 constitutional rights under Hubbell.

4 The Court has already violated U.S. v. Hubbell by
5 instructing lawyers who do not represent me, and knowing they 15:38:37
6 do not represent me, as the record will show, instructing them
7 to compile and turn over a list of documents that, in effect,
8 may be used against me.

9 In light of this fact, I am asking the Court to please
10 stay my portion of this proceeding until I can secure competent 15:38:53
11 counsel to address this very complex matter before any other
12 violations of my due process rights may occur.

13 I met with counsel, Your Honor, within 72 hours of
14 finding out I didn't have counsel. I have been forced to take
15 a pro se position because I've learned I have no 15:39:12
16 representation.

17 It should also be noted that Mr. Tim Casey has
18 submitted a bill to Maricopa County in the sum of \$116,000 for
19 legal expense reimbursement for the cost incurred by him as
20 merely being a witness and merely testifying in this case. 15:39:30

21 Mr. Casey is a lawyer, one who I'm sure is able to defend
22 himself; I'm not. I simply cannot afford the cost of this type
23 of complex representation. I have asked the County to provide
24 me counsel, to their defense yesterday at around noon,
25 informal, written form, and I had not heard back from them with 15:39:50

1 their decision.

2 The situation has been created by the hands of the
3 ACLU and their attorneys. Your Honor, I would also like to
4 point out that the measure set for me and others contained in
5 the ACLU's threatening footnote that's at the issue of this, 15:40:07
6 they have in fact ensnared themselves and every other lawyer in
7 the courtroom. They, too, along with every other lawyer in
8 this courtroom, would have to be held to the same standard of
9 violation that the ACLU wishes to affix to me and the Maricopa
10 County Sheriff's Office. 15:40:25

11 Your Honor, I see no harm in proceeding with your case
12 and at least holding my testimony in abeyance until I'm allowed
13 ample time to get this matter under control. I have just not
14 been afforded adequate time.

15 Your Honor, the least you can do is grant me 21 more 15:40:40
16 days to secure counsel and please stay your decision, and not
17 require me to be deposed or testify until I could secure
18 adequate representation and get a full understanding of the
19 circumstances.

20 Should you decide today, Your Honor, to rule against 15:40:56
21 me, I'm going to find myself thrust again into a situation that
22 I don't want to be in and one not of my making where I'm going
23 to have no other option but to appeal pro se, pro se to the
24 Ninth Circuit asking for an emergency stay on the matter,
25 something I don't want to do. 15:41:15

1 I have due process rights, and I think I have grave
2 concerns, and I think my rights need to be recognized and
3 abided by. Thank you.

4 THE COURT: Thank you, Mr. Zullo.

5 Does anybody from plaintiffs wish to respond? 15:41:26

6 MR. YOUNG: Your Honor, I think we've said everything
7 we want or need to say in our previous papers, which I did
8 e-mail to Mr. Zullo on Tuesday. We think that the Court needs
9 to proceed. Mr. Zullo is a witness, not a party in this
10 action, and in order to complete the proceeding that the Court 15:41:46
11 is in the middle of, I think we need to proceed.

12 THE COURT: Thank you.

13 Does any other party have anything they wish to say?

14 MR. WALKER: Your Honor, this is Richard Walker. I
15 just wanted to advise the Court that Mr. Zullo is correct: He 15:42:02
16 sent a letter requesting that the County provide counsel to me
17 yesterday.

18 I responded to that letter -- it was probably around
19 1 o'clock or 1:30, so Mr. Zullo had probably left his
20 computer -- and tried to explain in some considerable detail 15:42:24
21 why the County does not believe he is entitled to be provided
22 counsel at taxpayer expense.

23 THE COURT: Do you want to summarize that for us here
24 today, Mr. Walker, please.

25 MR. WALKER: Certainly, Your Honor. 15:42:45

1 I think that the key issues are, first of all, as
2 things presently stand, Mr. Zullo is not -- has no civil claim
3 asserted against him, and that also distinguishes him from the
4 named contemnors, who have been threatened with the possibility
5 of civil contempt.

15:43:15

6 And the institutional representation that Jones,
7 Skelton provides, from the County's perspective, provides
8 representation of employees, and under certain circumstances,
9 including ones applicable to Mr. Zullo, agents of MCSO, for
10 purposes of the institutional interest, but not as individuals.

15:43:46

11 And my letter also explains that he may have been led
12 to a misconception by the fact that the alleged contemnors have
13 individual counsel. To the extent that those attorneys have
14 been retained to provide advice on potential criminal issues,
15 however, they have not been provided by the County; those
16 attorneys have been retained by the individuals themselves at
17 their expense. And that is a standard policy of the County:
18 not to provide counsel for purposes of advice on potential
19 criminal matters.

15:44:21

20 With respect to Mr. Zullo's comments about Mr. Casey's
21 bill, it is true, I learned, I think it was either yesterday or
22 maybe even this morning, that Mr. Casey had submitted a bill
23 seeking reimbursement for the ethics counsel he retained in
24 connection with his appearance as a witness in this case.

15:44:46

25 I can inform the Court that this was in the wake of

15:45:15

1 his having been informed by the Maricopa County Attorney's
2 Office that his request for reimbursement was being denied, and
3 my understanding of his letter is essentially that he's
4 appealing that decision to the Board of Supervisors.

5 THE COURT: All right. Thank you, Mr. Walker. 15:45:39

6 Does anybody else, any other party or specially
7 appearing nonparty, have anything they wish to say?

8 I take it by the silence the answer is no.

9 Now, Mr. Zullo, it's your motion, so as I explained at
10 the start, you get the opportunity first to speak and you get 15:45:58
11 the opportunity last to speak, and so I'll hear from you again
12 if you wish to say something.

13 MR. ZULLO: Thank you, Your Honor.

14 I am -- I'm not a naive guy. I was a sworn police
15 officer at one time in my life. I've testified in courts; I've 15:46:16
16 testified before grand juries; I've put people in prison. I'm
17 not stupid. I didn't get anything wrong in representations
18 made to me. I understand the splitting hairs. Before I turned
19 over what's at issue today, I made it emphatically clear I
20 needed to know who was representing me and what was going to be 15:46:34
21 done with it, and I was told. It wasn't followed through.

22 I find myself in a position where I don't want to hold
23 your court up. It's not that I don't want to cooperate; I just
24 have some very serious, serious concerns. And I don't believe
25 that footnote should have ever been entered into this 15:46:54

1 proceeding, but it has been, and I'm very concerned about it;
2 personally, I am very concerned about it. I'm concerned about
3 it for my family.

4 And Your Honor, I want to make sure that I'm not
5 wandering off here, so if I am I'm going to ask you to please 15:47:11
6 corral me. But I don't want to mislead this Court. My
7 testimony will not support the Court's hypothesis. It just
8 will not.

9 So there's no delaying tactic here. I just want my
10 rights protected. Thank you. 15:47:29

11 THE COURT: Thank you.

12 Mr. Zullo, I am going to deny your motion for
13 protective order. Let me explain why. And I'm also going to
14 deny your motion for a stay. You've kind of mixed the two,
15 it's completely understandable. I'm going to explain why in 15:47:47
16 both cases. I've already denied your motion for a stay once,
17 but I'll explain it again why I'm doing that.

18 First, as it pertains to your motion for protective
19 order, you did cite some good law, and let me just say that
20 you've done a very fine job in terms -- I mean, I'm not saying 15:48:03
21 that you shouldn't get a lawyer, lawyers are always better, but
22 you've done a fine job in putting forth your legal argument and
23 you even, I think, put forth the appropriate case to make the
24 best claim. And the case is the Hubbell case. And what the
25 Hubbell case says is that even the act of producing documents, 15:48:24

1 to the extent that you're acknowledging that you had the
2 documents, to the extent that that suggests that you had the
3 documents and you created them, there is at least some aspect
4 of that that could be incriminating. And that is what the case
5 says, and you were right to cite it in terms of the facts of
6 this case. 15:48:45

7 There are a couple of exceptions to Hubbell, though,
8 and I think that they both apply here, and I'll give you a
9 brief explanation and then I'm going to file a written order
10 today that will explain my explanation, and that will assist
11 you to the extent that you may seek emergency relief. You
12 indicated you don't want to do that. I understand you don't
13 want to do it. But to the extent that a written explanation of
14 my order is set forth, that may help you in doing it. 15:48:56

15 The first is even if Mr. Masterson and Mr. Popolizio
16 were your lawyers, even if they were your lawyers, when you
17 turn the documents over to them and they are subpoenaed, and
18 they are the ones who have to produce them, you lose any sort
19 of testimonial aspect because you're not the ones that's
20 producing them, and that's set forth in the Fisher case. So
21 even if they were your lawyers when you turned the documents
22 over to them, because they're being subpoenaed for them, there
23 is no criminal aspect -- or no self-incriminating aspect to it
24 because they're the ones that's producing them, not you. 15:49:40

25 The second reason you'll see that I'm going to deny 15:49:57

1 your order is even though persons have a right to say, My mere
2 production of these documents incriminates me, they don't when
3 they are people who are working for a recognized organization.
4 And it is my ruling, and I'm basing it on some responses that
5 you gave to document production requests, that I think the term 15:50:18
6 you used was that you were individually activated, not as a
7 member of the Cold -- you know, not the whole Cold Case --

8 MR. ZULLO: Um-hum.

9 THE COURT: -- Posse was individually activated, but
10 that you personally were individually activated by the Maricopa 15:50:30
11 County Sheriff's Office when you went to Seattle.

12 And so the things that you have done and the documents
13 you've created in pursuit of the Seattle investigation are
14 documents that are created for the MCSO, and that doesn't give
15 you a personal right to claim self-incrimination as a result of 15:50:49
16 them, at least those are going to be my two rulings, and I'm
17 going to -- as I said, I'm going to set that forth in writing
18 so that you can have it in pursuing whatever emergency relief
19 you feel like you need to pursue. I hope that will assist you.

20 I'm also going to deny your request for a stay. And 15:51:07
21 even though I understand, and, to some extent, have sympathy
22 for the situation you're in, it looks to me like you became
23 aware even -- and I realize that there may be a factual dispute
24 between you and Mr. Masterson and Mr. Popolizio about what you
25 may have been told or what your understanding was, but even 15:51:26

1 accepting your version of events, you were told unequivocally
2 that you weren't represented by them on October 20th or 21st,
3 so I've already kind of postponed the proceeding to allow you
4 to seek to obtain an attorney. We're now, what? It's the 6th
5 of November. You are not a party to this case, meaning that I 15:51:44
6 haven't indicated that I have any civil contempt contentions
7 against you, let alone any criminal contempt assertions against
8 you.

9 Now, that does not mean -- and you're perfectly
10 correct -- that doesn't mean that the United States Government 15:52:01
11 may not choose to prosecute you. I can't say that; I don't
12 know that. But I also feel, after looking at the statutes at
13 issue, that I don't just have free-form ability to go around
14 granting immunity to people. There has to be a motion from the
15 United States Government; they have to go through a whole 15:52:20
16 process to do that; they've indicated they're not going to do
17 that.

18 You indicated you wanted counsel from Maricopa County.
19 But Maricopa County has indicated now for some time, and
20 they've just reiterated, that they are not going to pay for you 15:52:31
21 to have counsel because you're not -- I haven't noticed you as
22 somebody who I'm interested in any sort of criminal referral
23 and you're not a subject of the civil contempt motion, and so
24 you're really not a party to this case.

25 You suggested that I have a hypothesis, and I 15:52:49

1 understand that you may feel that way. But what I'm really
2 trying to do is hold a hearing where I can have all the facts
3 and from those facts determine what happened, and sometimes
4 maybe what happened isn't even really relevant to what I'm
5 really looking at, which is remedies -- which is whether or not
6 there's a contempt, and what the remedies need to be.

15:53:11

7 Again, it seems to me that you have relevant
8 information that may cut one way or the other, and if it
9 doesn't cut the way that you perceive that I want it to cut,
10 that doesn't matter. It is relevant information and I'm going
11 to listen to it; I'm going to give it as much credence as I
12 give everybody else's.

15:53:29

13 That being said, that does not mean that you still
14 don't have your Fifth Amendment rights, and whether or not you
15 have an attorney you can invoke those rights, and I'm not
16 trying to suggest that you can't invoke those rights, and it's
17 up to you and/or your counsel to determine whether or not you
18 should invoke those rights in any given circumstance, and so
19 I'm going to leave that to you. I do believe that we've
20 already -- and so I'm going to order --

15:53:45

15:54:04

21 Mr. Masterson, Mr. Popolizio, are you there?

22 MR. MASTERSON: This is John Masterson, Judge. We're
23 here.

24 THE COURT: All right. I am going to order you to
25 turn over the documents that you've been holding today, as you

15:54:15

1 indicated you would, to all other parties in this action.

2 Mr. Zullo, I think you've already indicated that you
3 had Monday free to be deposed. Is that the date that we've set
4 for the deposition?

5 MR. YOUNG: We have noticed that date, Your Honor, and 15:54:27
6 we do intend to take it starting at 9:00 a.m. on Monday.

7 THE COURT: All right. That doesn't prevent you,
8 Mr. Zullo, if you want, from having an attorney to represent
9 you there. It doesn't prevent you from having an attorney to
10 represent you here. As I've indicated, whether or not you feel 15:54:38
11 like you're able to hire an attorney, that also does not
12 prevent your invocation, in appropriate circumstances, of your
13 Fifth Amendment rights.

14 Fifth Amendment rights do have to implicate -- do have
15 to be related to some sort of legitimate concern of criminal 15:54:52
16 prosecution. But you've already set forth the footnote which
17 you've indicated causes you concern, and I understand that it
18 does cause you concern. I am aware that the United States has
19 not -- has indicated that it has no intention of granting you
20 any immunity, so I understand that concern. But beyond that, 15:55:10
21 you need do make that decision yourself or you need to make it
22 in conjunction with an attorney.

23 Do you understand what I'm --

24 MR. ZULLO: Yes, sir.

25 THE COURT: -- saying? 15:55:23

1 MR. ZULLO: I do understand.

2 THE COURT: All right. Do you have any other
3 questions that other counsel here might assist you in
4 answering?

5 MR. ZULLO: It's very difficult, Your Honor, for me to 15:55:30
6 communicate anywhere, because I don't have an attorney. So I'm
7 going to ask you a question and if you can't answer it, I
8 understand.

9 THE COURT: All right. I'm not going to prevent you
10 from asking me a question, but I am going to tell you that as a 15:55:44
11 judge I'm prohibited from practicing law, meaning that I won't
12 be able to give you legal advice.

13 MR. ZULLO: Okay.

14 THE COURT: But, you know, I will try to make things
15 as clear to you as I can within the realm of that limitation. 15:55:55

16 MR. ZULLO: As far as my deposition is concerned, is
17 there a process or a negotiation that could take place that
18 would streamline that deposition to the relevant matters that
19 are before you and not a broad-based fishing expedition?

20 THE COURT: Well, I think what you can do is raise 15:56:16
21 your concerns with the parties and/or your objections with the
22 parties. If I have to rule on objections, I have sentencings
23 all day on Monday but I can try to take any objections or
24 concerns and rule on them either at the end of the day or at
25 noon; or, if we need to, first thing on Tuesday morning, to 15:56:34

1 resume the deposition.

2 But my suggestion to you, Mr. Zullo, would be if you
3 have concerns of that nature, and if you're comfortable doing
4 so, you can explain them to the parties who are at your
5 deposition and see if they will agree to streamline their
6 questions in a way that you anticipate; and if they won't, then
7 you can take appropriate action based on the individual
8 questions that you're asked.

15:56:48

9 But even though it's always better to have an
10 attorney -- and I'm not trying to suggest that it isn't, for
11 reasons that I think you already know -- simply because you
12 don't have an attorney does not mean that you don't have
13 constitutional rights.

15:57:03

14 MR. ZULLO: Oh, I understand that, sir.

15 THE COURT: All right. And you do have the right to
16 assert those in appropriate circumstances.

15:57:16

17 MR. ZULLO: Yes, sir.

18 THE COURT: All right. Anything else that anybody
19 would like to bring up?

20 MR. WOODS: Briefly, Your Honor. Your Honor, the
21 parties have indicated that they're not going to call either of
22 my clients as witnesses in this hearing, and so while I want to
23 remain on the mailing list, you won't be seeing me any more,
24 for that reason.

15:57:28

25 THE COURT: All right. Thank you for letting me know

15:57:43

1 that, Mr. Woods.

2 MR. WOODS: Thank you, Your Honor.

3 THE COURT: Mr. Young?

4 MR. YOUNG: Yes, Your Honor. We do have a scheduling
5 issue, and it relates to the discussion we've had as to the
6 sequence of witnesses. We have three witnesses left, to my
7 knowledge: Captain Skinner, Chief Sheridan, and Mr. Zullo.

15:57:55

8 Because we are planning to take Mr. Zullo's deposition
9 on Monday and his deposition transcript, which hopefully would
10 speed things along, I don't think is going to be ready on
11 Tuesday morning, it would be our proposal that Captain Skinner
12 and Chief Sheridan, in whatever order defendants want, testify,
13 and then we have Mr. Zullo after them.

15:58:14

14 We did ask Ms. Iafrate earlier this afternoon about
15 Chief Sheridan's condition, and I'm not sure about that at this
16 point, so I think I would perhaps ask counsel for defendants
17 whether that would be acceptable to them and ask the Court
18 whether it would be acceptable for the Court to proceed in that
19 sequence.

15:58:35

20 THE COURT: All right. I'll indicate that it is
21 acceptable to the Court to proceed in that sequence -- I
22 believe I raised it as a possibility -- recognizing that there
23 may be other obstacles to it that the parties might work out.

15:58:54

24 Mr. Masterson, Mr. Popolizio, do you have any
25 concerns?

15:59:09

1 MR. MASTERSON: Well, Judge, I do have a concern.
2 We're going to be prepared to have Captain Skinner testify as
3 early as Tuesday, but I think that the plaintiffs are going to
4 have the transcript of that deposition. We've been getting
5 them the same day, as I recall, that the depositions are taken, 15:59:26
6 we get them late in the day, and certainly no later than the
7 following morning.

8 So I don't want to have another gap, but I want to
9 give as much time for Chief Sheridan to testify as possible.
10 So we were looking at Chief Sheridan late Thursday or possibly 15:59:42
11 on Friday, so I think Mr. Zullo ought to be able to testify
12 between Captain Skinner and Chief Sheridan.

13 THE COURT: Well, it doesn't seem to me to be --
14 Mr. Young's request that they have an ability to get the
15 deposition back and look at it doesn't seem to me to be 16:00:03
16 unreasonable. Of course, to the extent that there are issues
17 pertaining to the availability of Chief Sheridan, those don't
18 seem to me to be unreasonable, either, at least on their face,
19 if you're representing to me that they in fact do exist. So
20 maybe what we better do is plan to proceed with Captain Skinner 16:00:22
21 first thing Tuesday morning and then see where we're at when
22 Captain Skinner's testimony is over.

23 You indicated that you thought he might take up to
24 three hours, Mr. Masterson?

25 MR. MASTERSON: I think that's right, Judge. Probably 16:00:36

1 not more than that. We're still going over outlines and such,
2 and I think we've -- we're probably somewhere in the vicinity
3 of between two and three right now.

4 THE COURT: All right. Well, I would ask you to do
5 this, then. I'm going to ask you to do something; I'm going to
6 ask Mr. Young to do something. 16:00:51

7 I'm going to ask you, Mr. Masterson, to check with
8 Chief Deputy Sheridan, see if there is any possibility that he
9 would be able to proceed Tuesday afternoon if we're available
10 and then reconvene Thursday morning. 16:01:09

11 If that is possible, that's what I would like to do.
12 If it's not possible, I'm going to ask you, Mr. Young, to check
13 and see if Mr. Zullo would be available to come in Tuesday
14 afternoon, and if that's going to at all be possible for you,
15 if you can make arrangements to do that. 16:01:28

16 So the first order of business is Mr. Masterson, you
17 check with Chief Deputy Sheridan to ascertain his availability
18 for Tuesday afternoon. If he's not available, Mr. Young, check
19 with Mr. Zullo and with the court reporter to see if it's
20 available physically and otherwise for you to proceed with
21 Mr. Zullo Tuesday afternoon. 16:01:45

22 If that's not available, then we'll just have to
23 proceed with one or the other on Thursday morning and proceed
24 as that goes on Friday. And if we have to go on Saturday, I'll
25 see if I can make arrangements to go on Saturday, so that we 16:01:57

1 can be as efficient as possible.

2 Any concerns about that proceeding?

3 MS. WANG: No, Your Honor. We'll try our best.

4 THE COURT: Mr. Masterson?

5 MR. MASTERSON: No concerns, Judge. 16:02:10

6 THE COURT: All right.

7 MR. YOUNG: We have another issue, which is exhibits.

8 We have inquired repeatedly of defendants whether

9 there are any exhibits that they plan to introduce as part of

10 their case, since I think we would be entitled to get a list 16:02:24

11 and to get copies of them. We have not received a response.

12 Our assumption based on that is that there are no exhibits that

13 defendants intend to produce and we would seek the Court's

14 guidance on that, and obviously an answer from defendants as

15 well. 16:02:42

16 THE COURT: Mr. Masterson.

17 MR. MASTERSON: Judge, I'm just sitting here looking

18 across the room, and I thought we had sent them but we're

19 poised to send exhibits out right now, so we're going to be

20 sending some their way here as soon as we get off the phone. 16:02:58

21 MR. WALKER: Your Honor, this --

22 MR. MASTERSON: And I'll tell you, there's not a whole

23 bunch of them.

24 MR. WALKER: Your Honor, this is Richard Walker.

25 I anticipate having two exhibits on behalf of the 16:03:09

1 County, and I should be able to send those out by tomorrow.

2 THE COURT: All right. Mr. Walker, you indicated that
3 you may or may not call witnesses. Have you been able to
4 arrive at any determination with the plaintiffs as to whether
5 or not that's going to be necessary? 16:03:26

6 MR. WALKER: No, I haven't, Your Honor, and I wouldn't
7 expect that. I'm sure they -- they will want to see these
8 exhibits first. And once they see them, I'm hopeful that they
9 will give me the stipulations I need so that I don't have to
10 call the witnesses. 16:03:43

11 THE COURT: All right. Well, I'm really going to be
12 very pinched, as I've indicated, on Monday; you're going to be
13 in deposition, anyway. But if there are matters that need to
14 be raised, I should be available around noon and after 5:00, so
15 we can take up matters then, or, if need be, Tuesday morning. 16:03:58
16 But otherwise, I'm going to expect that in any event, we are
17 going to be begin with Captain Skinner first thing on Tuesday
18 morning.

19 Anything else?

20 MR. YOUNG: Yes, Your Honor. 16:04:12

21 MS. WANG: Your Honor, this is --

22 MR. YOUNG: Ms. Wang has a point that she will raise.

23 THE COURT: All right. Ms. Wang?

24 MS. WANG: Thank you, Your Honor. On October 9th
25 during court we raised a few issues about the proposed subject 16:04:25

1 matters for Chief Sheridan's testimony in defendants' case in
2 chief, and specifically we discussed first the relevance of any
3 testimony by Chief Deputy Sheridan on training provided by the
4 United States Government to MCSO deputies back when they were
5 certified under the 287(g) program.

16:04:50

6 And secondly, Your Honor, we also raised an objection
7 to defendants putting on any duplicative testimony by Chief
8 Sheridan. Many of the topics that they described in the joint
9 pretrial statement are matters on which there was already
10 comprehensive testimony by Chief Sheridan during our case in
11 chief.

16:05:11

12 So Your Honor, I've written to defendants to try to
13 seek clarification on whether they have revised their
14 intentions on Chief Sheridan's testimony, I have not heard back
15 from them, and so I would seek the Court's guidance as to
16 whether Your Honor would entertain a motion in limine or
17 whether you would prefer that we raise objections as we go
18 along during the direct examination of Chief Sheridan.

16:05:27

19 THE COURT: Well, I think we have killed a lot of
20 trees in this case; we'll probably kill more. I don't think we
21 need a new motion in limine. I think I indicated that I don't
22 see the relevance of Chief Deputy Sheridan's attempts to
23 testify that the United States Government instructed them
24 concerning the ability to use race as one factor among others
25 in their 287(g) training.

16:05:44

16:06:06

1 That being said, I have always said, and so found in
2 my original findings of fact and conclusions of law -- about
3 which, by the way, I already have entered the findings of fact
4 and conclusions of law, which have been affirmed by the Ninth
5 Circuit -- that such training was provided by Immigration and
6 Customs Enforcement to the Maricopa County Sheriff's Office,
7 and that they followed and promulgated such training in their
8 subsequent instructions to their own patrol deputies personnel.

16:06:22

9 So Mr. Masterson, I'm not really going to be willing
10 to entertain a lot on this. If you feel like fairness requires
11 that it be brought out, it can be brought out about to the
12 extent I've just brought it out. But this matter has already
13 been litigated; there have already been findings of fact; those
14 findings of fact have been affirmed by the Ninth Circuit.

16:06:45

15 Do you intend to dwell on it very long, Mr. Masterson?

16:06:59

16 MR. MASTERSON: Judge, I don't intend to dwell on it
17 very long, and in fact, I'm really happy right now this is kind
18 of the first time that anybody's said that out loud for
19 everyone to hear. And so I do not intend to dwell on it, and I
20 think we can -- and we're certainly not going to try to
21 duplicate testimony that we've already brought forward through
22 Chief Sheridan or other witnesses.

16:07:18

23 THE COURT: All right. So I guess in answer to your
24 question, Ms. Wang: Why don't we save trees? If you have
25 objections, you can make them during Chief Deputy Sheridan's

16:07:37

1 testimony.

2 MS. WANG: Thank you, Your Honor. We'll go forward
3 that way.

4 THE COURT: Anything else that anybody needs to raise?
5 All right. I'll see you Tuesday morning.

16:07:48

6 (Proceedings concluded at 4:07 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 11th day of November, 2015.

s/Gary Moll