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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Manuel de Jesus Ortega Melendres, on behalf  
10 of himself and all others similarly situated; et  
11 al.

No. CV-07-02513-PHX-GMS

**ORDER**

11 Plaintiffs,

12 and

13 United States of America,

14 Plaintiff-Intervenor,

15 v.

16 Paul Penzone, in his official capacity as  
17 Sheriff of Maricopa County, Arizona; et al.

18 Defendants.  
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21 Pending before the Court is Plaintiffs' and United States' (collectively, "Plaintiffs")  
22 Joint Motion for an Order to Show Cause. (Doc. 2610.) For the following reasons, the  
23 motion is granted.

24 **DISCUSSION**

25 **I. Legal Standard**

26 A party may be held in civil contempt when, after receiving notice, it fails to take  
27 all reasonable steps within its power to comply with a specific and definite judicial order.  
28 18 U.S.C. § 401(3) ("A court of the United States shall have power to punish by fine or  
imprisonment, or both, at its discretion, such contempt of its authority, and none other,

1 as . . . [d]isobedience or resistance to its lawful writ, process, order, rule, decree, or  
2 command.”); *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695  
3 (9th Cir. 1993). A district court has “wide latitude in determining whether there has been  
4 a contemptuous defiance of its order[s].” *Stone v. City & Cnty. of San Francisco*, 968 F.2d  
5 850, 856 (9th Cir. 1992). The Ninth Circuit’s rule regarding contempt “has long been  
6 whether defendants have performed ‘all reasonable steps within their power to insure  
7 compliance’ with the court’s orders.” *Id.* (quoting *Sekaquaptewa v. MacDonald*, 544 F.2d  
8 396, 404 (9th Cir. 1976)).

9 The moving party bears the initial burden of establishing by clear and convincing  
10 evidence that the contemnors violated a specific and definite order of the Court. *Donovan*  
11 *v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983). The burden then shifts to the contemnors  
12 to produce evidence explaining their noncompliance. *Id.* The contemnors must show that  
13 they took every reasonable step to comply. *Sekaquaptewa*, 544 F.2d at 406.

## 14 II. Analysis

15 Plaintiffs have met their initial burden of producing clear and convincing evidence  
16 that Defendants Sheriff Paul Penzone and Maricopa County (collectively, “Defendants”)  
17 violated a specific and definite court order.<sup>1</sup> On July 26, 2016, the Court issued an  
18 injunction (the “Second Order”) which required reforms to MCSO’s internal investigation  
19 procedures. (Doc. 1765.) The Second Order requires the Sheriff to ensure that “all  
20 allegations of employee misconduct, whether internally discovered or based on a civilian  
21 complaint, are fully, fairly, and efficiently investigated,” *id.* ¶ 163, and that the Sheriff and  
22 MCSO “conduct objective, comprehensive, and timely administrative investigations of all  
23 allegations of employee misconduct,” *id.* ¶ 183. Specifically, investigators must complete  
24 the administrative investigations “within 85 calendar days of the initiation of the

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26 <sup>1</sup> In addition to seeking initiation of civil contempt proceedings against Paul Penzone and  
27 Maricopa County, Plaintiffs seek civil contempt proceedings against the Maricopa County  
28 Sheriffs’ Office (“MCSO”). (Doc. 2610 at 3.) However, the Ninth Circuit Court of  
Appeals previously found that MSCO was improperly named as a party in this action.  
*Melendres v. Arpaio*, 784 F.3d 1254, 1260 (9th Cir. 2015). Accordingly, the Court only  
considers whether civil contempt proceedings are appropriate as to Defendants Maricopa  
County and Paul Penzone.

1 investigation (60 calendar days if within a Division).” *Id.* ¶ 204. Requests for extensions  
2 of time must be approved by the Commander of the Professional Standards Bureau and  
3 may only be granted if reasonable. *Id.*

4 Defendants have continually failed to complete their investigations in a timely  
5 manner. The average closure of a case took 204 days in 2018, 499 days in 2019, and 552  
6 days in 2020. (Doc. 2569 at 193.) These average closures far exceed the deadlines for  
7 completion set forth in the Second Order and they are in gross violation of the state law.  
8 *See* A.R.S. § 38-1110 (180-day time limit for completing an investigation). Further, the  
9 Independent Monitor for the MCSO (the “Monitor”) found MSCO in non-compliance with  
10 paragraph 204’s requirements in its November 2020 and February 2021 reports. (Docs.  
11 2569, 2594.) In its November 2020 report, the Monitor found that, of the 65 administrative  
12 misconduct investigations submitted for compliance review, only 11 investigations were  
13 completed within the 60- or 85-day time frame and of the remaining 54 investigations, only  
14 14 contained acceptable justification for extension of time. (Doc. 2569 at 203.) And in its  
15 February 2021 report, the Monitor found that, of the 146 administrative misconduct  
16 investigations submitted for compliance review, 74 investigations were completed within  
17 the required time frame or contained an acceptable extension request and approval. (Doc.  
18 2594 at 201.)

19 Defendants’ failures negatively impact the quality and efficacy of their  
20 investigations. As the Court observed in its December 18, 2020 order, delays in  
21 investigation have the tendency to deny justice because the matter remains unresolved,  
22 memories fade, and witnesses become unavailable. (Doc. 2576 at 2.) Most concerning,  
23 MSCO policy provides that the appeals board “may dismiss [ ] discipline if it determines  
24 that the [MCSO] did not make a good faith effort to complete the investigation within 180  
25 calendar days.” *Maricopa County Sheriff’s Office Policy and Procedures* 16 (2020),  
26 <https://www.mcso.org/home/showpublisheddocument/586/637460590886200000>. In the  
27 past, MCSO purposefully exceeded this time limit to justify imposing no discipline or only  
28 minor discipline. (Doc. 1677 ¶¶ 576–78.)

1 On June 3, 2021, the Court held a hearing on the joint motion. (Doc. 2655.) During  
2 the hearing, the Court discussed its thoughts on Defendants' response, which provided  
3 Defendants' justifications for noncompliance. The Court stated that, even if it accepted  
4 everything in Defendants' response as true, it would hold Sheriff Penzone in contempt.  
5 (Doc. 2657 at 14.) Based on this observation, the Court offered Defendants the option to  
6 concede liability and focus the order to show cause hearing on what remedies to impose.  
7 *Id.* at 15. In a joint report following the hearing, Defendants stated they would not present  
8 any further substantive merits defense and opted to focus on remedies. (Doc. 2663 at 2.)  
9 Therefore, the show cause hearing, which the Court will set in a separate order, will focus  
10 on contempt remedies.

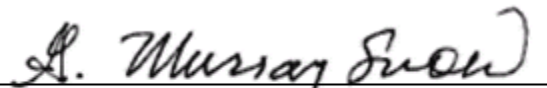
11 Additionally, pursuant to the procedures previously set forth, the Court has selected  
12 a management expert who will identify the sources of MCSO's failure to comply with the  
13 deadline for investigations in the Second Order and recommend remedial actions. The  
14 Court has questions about details related to the engagement of the management expert,  
15 which it will address with the parties in the status conference set in this Order.

16 Accordingly,

17 **IT IS THEREFORE ORDERED** that Plaintiffs' and United States' Joint Motion  
18 for an Order to Show Cause (Doc. 2610) is **GRANTED**.

19 **IT IS FURTHER ORDERED** setting an **in-person** status conference on **August**  
20 **27, 2021 at 10:00 a.m. (AZ Time)**.

21 Dated this 12th day of August, 2021.

22 

23 G. Murray Snow  
24 Chief United States District Judge