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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  
10 behalf of himself and all others similarly  
11 situated; et al.

11 Plaintiffs,

12 v.

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

15 Defendants.

No. CV-07-2513-PHX-GMS

**ORDER**

16 Pending before the Court is Defendants' Request to Clarify/Modify Order of April  
17 17, 2014. Within the limitations set forth below, that request is granted.

18 In its motion, Defendant requests that this Court clarify or modify its April 17,  
19 2014 Enforcement Order, Doc. 680, ("Enforcement Order") to make it inapplicable to  
20 "the MCSO personnel on the jail side" as well as to some MCSO personnel on what it  
21 denominates as being on "the sworn side." It asserts that, "on the jail side," the order  
22 applies to 1,815 detention officers and 782 jail volunteers such as religious volunteers  
23 and part-time teachers. As to the "sworn side" the MCSO has 1,750 posse members  
24 some of whom, it avows, are not involved in street enforcement operations. It cites to  
25 "Aviation and Helicopter posse members who are not involved in making traffic stops, as  
26 well as Advisory and Technology Posse members whose duties entail only fund-raising  
27 and administrative support." It thus requests that the Court limit its order to "those  
28 volunteers who are or might become engaged in making traffic stops."

1 The Court assumes the good faith effort by the MCSO to exempt from the terms of  
2 the Enforcement Order, those who, as a practical matter, have nothing to do with it. The  
3 Court further concurs that persons who have no connection with MCSO other than that  
4 they volunteer within MCSO jails as part-time teachers or religious volunteers have little  
5 actual connection with MCSO or the implementation of this Court's previous orders.  
6 Therefore, upon Sheriff Arpaio's certification of a list individually identifying persons  
7 whose only connection with MCSO is that they volunteer services within MCSO jail  
8 facilities, the MCSO is exempted from obtaining such volunteer's compliance with the  
9 Court's enforcement order.

10 Nevertheless, it appears that large numbers of the Sheriff's posse are involved in  
11 law enforcement or support of such activities. As to them, and the Sheriff's "jail" side  
12 personnel the grounds of distinction suggested by the MCSO for the remaining  
13 exemptions it proposes are not sufficiently workable as stated to give rise to a meaningful  
14 ability by this Court to ensure MCSO's compliance with its enforcement orders. Nor are  
15 they sufficient to ensure that MCSO personnel subject to this Court's orders, have  
16 received a clear understanding of the Court's order. Nor are they sufficient to prevent the  
17 MCSO's misleading public statements, made by MCSO personnel who have assignments  
18 over the jail or otherwise, from being misunderstood by MCSO personnel who are  
19 involved in the operations that are subject to the Court's injunction. To obtain an  
20 exemption for any such persons, therefore, the Sheriff must personally provide the  
21 specific and individualized certification as further detailed below.

22 First, the Defendants request that the Court's Enforcement Order be limited to  
23 those volunteer personnel who "are or might become engaged in making traffic stops" is  
24 insufficient to cover the scope of the Injunctions in this case. The certified Plaintiff class  
25 in this case is "All Latino persons who, since January 2007, have been or will be in the  
26 future, stopped, detained, questioned or searched by MCSO agents while driving or  
27 sitting in a vehicle on a public roadway or parking area in Maricopa County, Arizona."  
28 (Doc. 494 at 37.) Aviation and helicopters posse members are involved in law

1 enforcement operations and as such could conceivably be involved in operations that  
2 would directly involve members of the Plaintiff class. Further, to the extent that the  
3 Court's injunctions pertain not only to traffic stops, but to Latino persons who are  
4 detained by MCSO agents in vehicles," it seems to the Court that depending on the facts,  
5 the injunctions could conceivably apply to MCSO personnel on the "jail side." (For  
6 purposes of illustration, for example, it is not clear to the Court that personnel on the "jail  
7 side" were not involved in transporting detainees to ICE during the saturation patrols).  
8 Even if the injunctions would not apply to jail personnel in the broad run of cases, they  
9 do apply more broadly than merely to those MCSO personnel "who are or might become  
10 engaged in making traffic stops." The Court thus declines to limit the dissemination of  
11 the description of the Court's Order to such persons whether volunteer or employed staff.

12 Further, it is the Court's understanding that it is a practice for MCSO personnel to  
13 supplement their income by obtaining off-duty employment as security, traffic control, or  
14 other enforcement personnel during off-duty hours, during which service they still have  
15 access, and utilize MCSO facilities, uniforms, vehicles, weapons, and other resources,  
16 and in which capacity they may also have involvement with members of the Plaintiff  
17 class. The Court has no assurance that MCSO personnel that engage in such activities are  
18 only the sworn personnel as opposed to the "jail" personnel or that "jail" personnel are  
19 not otherwise engaged in off-duty activities in which they benefit from their MCSO  
20 status, use MCSO facilities, and yet may have contact with members of the Plaintiff  
21 class.

22 Further, there seems to be, at least at the supervisory level, responsibilities that  
23 combine jail operations and sworn personnel. It is the Court's recollection, for example,  
24 that Deputy Chief Sheridan, Chief Trombi, and Chief McIntyre either in the past or  
25 presently have all been or are currently involved with the operations of the MCSO jails.  
26 To the extent that their current assignment may include the operation of the jails, they are  
27 not excluded from the operation of the enforcement order. It is further not apparent to the  
28 Court that service within the jail side of the MCSO precludes service within the sworn

1 operations side of the MCSO. Nor is it clear that there is such a precise dichotomy within  
2 the MCSO administration which cleanly separates such operations among MCSO  
3 supervisory, staff or support personnel. It is not clear to the Court to what extent MCSO  
4 supervisory administrative or support personnel may have responsibilities that include  
5 both jail operations and law enforcement operations. Further, it is not clear, for reasons  
6 stated above, that MCSO jail staff never temporarily assume law enforcement functions,  
7 or are ineligible to assume such functions as a matter of promotion or otherwise.

8 Even if some “jail personnel are never involved with operations that pertain to  
9 members of the Plaintiff class, certainly the statements of MCSO command staff who  
10 may primarily have responsibility for the jails, may create confusion among the MCSO  
11 sworn deputies concerning their operations. For example, the Plaintiffs note that Chief  
12 McIntyre, who apparently during the course of this lawsuit had the title of Deputy Chief  
13 Custody Bureau One and whose responsibilities apparently include or included the  
14 management of two MCSO jails and its central intake, has recently given a press  
15 interview in which he has stated that “[t]here is no equivocation here. Despite the fact of  
16 reports in the media, there is no court finding that the sheriff’s office racially profiled.”  
17 See [http://kjzz.org/content/2641/term-racial-profiling-sparks-language-debate-mcso-](http://kjzz.org/content/2641/term-racial-profiling-sparks-language-debate-mcso-lawsuit)  
18 [lawsuit](http://kjzz.org/content/2641/term-racial-profiling-sparks-language-debate-mcso-lawsuit).<sup>1</sup>

19 This statement sows confusion rather than clarity. In its Findings of Fact and  
20 Conclusions of Law, this Court set forth a number of instances, instructions and policies  
21 in which the MCSO unconstitutionally and inappropriately considered race as one factor  
22 among others in making law enforcement decisions. Nevertheless, since the Court made  
23 these findings, MCSO and its command staff, including Sheriff Arpaio, have stated, both  
24 in public statements and in training/briefing to deputies, that the MCSO never engaged in

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26 <sup>1</sup> Defendants in their Reply, indicate that Chief McIntyre has other responsibilities.  
27 The Court is not sure whether the responsibilities set forth in the Reply constitute Chief  
28 McIntyre’s sole responsibilities. But, even if so, that does not change the nature of the  
Court’s concern with the categories suggested by the Defendant upon which the Court  
should mandate compliance with its Enforcement Order as they may apply to MCSO  
command staff that operate the jails.

1 racial profiling and/or that the Court never so found. Such statements are misleading at  
2 best.

3 As this Court has previously stated, it has no present intention of attempting to  
4 restrict the MCSO's public statements, even if, in its assessment, those statements are  
5 inaccurate and misleading. Nevertheless, to the extent that such misstatements stand  
6 without correction to MCSO personnel, or are made directly to them, they create  
7 confusion in the very personnel who must understand the Court's Order to appropriately  
8 implement it. The MCSO is a single agency. Misunderstandings that affect parts of the  
9 agency that are the result of misstatements made by the Sheriff and others in command,  
10 affect the understanding of the entire agency. Based on the testimony of Chief Trombi,  
11 misimpressions within the MCSO are widespread and rampant. They result from  
12 communications among unspecified MCSO staff and others. In his attempt to identify  
13 the source of his misstatements, Chief Trombi specifically identified "deputies" and  
14 "office staff members" and just "general conversations" around the office and "in other  
15 areas" in which he participated involving other MCSO personnel:

16 A. I thought about that, and I cannot, in all honesty, tell you who  
17 specifically. I can tell you, sir, that I heard those incorrect statements that I  
18 made in conversation in -- in meetings or in settings with others within the  
19 Sheriff's Office that -- that those statements over the last, I suppose, six  
20 months kind of permeated my brain, unfortunately, and stuck with me, and  
21 unfortunately, and regrettably, I used those.

22 Doc. 672 at p. 11

23 A. I don't know if "meetings" are accurate. At times when I might  
24 have been together with other deputies or office staff members that we were  
25 just talking and those incorrect statements were used, I retained them and  
26 then used them.

27 *Id.* at p. 12

28 A. I wish I could honestly tell you the group, the command staff, or  
any -- any group that those statements were made. It's just general  
conversation that I've had around the office and in different areas.

1 *Id.* at p. 13

2 Q. I appreciate the specification. Whether or not you heard Chief  
3 Deputy Sheridan say it, you had heard it a number of times and you can't be  
4 specific because you've heard it so many times at other places throughout  
5 the MCSO.

6 A. That is correct, sir.

7 Q. All right. And you can't give me a specific idea where you got  
8 that -- from any specific conversation about that 14 seconds, other than that  
9 just seemed to be -- and again, I don't want to put words in your mouth, so  
10 correct me -- but that was sort of the general received knowledge that's over  
11 at the MCSO.

12 A. It was my general perceived knowledge, yes.

13 Q. All right. And you obtained that from others at the MCSO,  
14 because you didn't come up with it on your -- on your own, correct?

15 A. I did not, correct.

16 Q. And was that the view that seems to -- seemed to generally  
17 prevail, as far as you're aware, over at the MCSO?

18 A. Yes.

19 *Id.* at p. 15

20 Q. All right. Do you have any recollection where you got the  
21 characterization that that decision was based only upon the action of two  
22 officers?

23 A. Your Honor, both of those statements that I made were usually  
24 hand in hand, if you will, so not knowing where I specifically heard my  
25 first incorrect statement regarding 14 seconds longer, I can no more tell you  
26 where the other usually hand-in-hand statement of and two deputies were  
27 found to have used race when making the determination whether or not to  
28 arrest somebody, they were -- they were joined together usually in that  
29 conversation or where I had heard those things.

30 Q. All right. And is it fair to say that if they are joined together,  
31 you'd heard it from a number of different sources throughout the MCSO  
32 over the six-month period that preceded your participation in the  
33 community meeting a few weeks ago?

34 A. Yes, sir.

35 Q. All right. And you -- you couldn't identify any particular source  
36 but that it was many sources, is that fair?

37 A. Several, many, yes, sir. I can't argue -- I can't say one way or the other.

38 *Id.* at p. 21

1 The Court certainly does not wish to create a category of persons within the  
2 MCSO who can mischaracterize the Court's statements to others within the MCSO with  
3 impunity. The Court's best remedy to such situations, without restricting the ability of  
4 the Sheriff or members of his command staff to publicly speak, is to make sure that all  
5 MCSO personnel have direct familiarity with its order.

6 It is not clear to the Court that those who principally participate in the jail  
7 operations or have support, administrative or supervisory responsibilities within the  
8 MCSO have not been a part and will not continue to be a part of public or MCSO  
9 communications or in-office discussions in which the Court's Orders may be  
10 mischaracterized, and which may, thus, influence the understanding of those who have  
11 responsibility to implement those orders.

12 To the extent that the MCSO continues to make public statements that  
13 mischaracterize the Court's orders, as Chief McIntyre's statements indicate it continues  
14 to do, the Court does not wish to artificially limit the extent to which the misimpressions  
15 sown by such statements within MCSO personnel may be corrected by an appropriate  
16 understanding.

17 Nevertheless, with the reservations expressed above, the Court does not wish to  
18 require that MCSO obtain the compliance certification set forth in its Enforcement Order  
19 from persons that could, in no way, affect the implementation of this Court's Order.

20 Therefore, to the extent that the Sheriff sets forth a list of persons in which he  
21 individually identifies by name, position, identification number if any, and employment  
22 status, and if he personally certifies, by his signature, that such persons:

23 (1) are never engaged in official or off-duty law-enforcement related functions that  
24 impact members of the Plaintiff class, and

25 (2) he does not anticipate placing such persons in a position that could possibly  
26 impact members of the Plaintiff class and they are not authorized to participate in an off-  
27 duty capacity in such functions; and

28 (3) such persons have not received instruction or training from MCSO personnel

1 about the Court's Order; and

2 (4) such persons have not received or participated in, nor will they receive or  
3 participate in any MCSO or workplace communications that misrepresent the court's  
4 order; and

5 (5) such persons will not make public statements that can be attributed to the  
6 MCSO regarding the Court's Order which misstate its terms.

7 Then the MCSO is excused, with respect to such persons, from individually  
8 certifying compliance with the terms of this Court's Enforcement Order. Within his  
9 discretion, the Monitor or his staff is authorized to investigate whether the persons so  
10 designated by the Sheriff fit the requirements set forth in this clarifying order.

11 **IT IS THEREFORE ORDERED:**

12 1. Excusing the MCSO from certifying compliance with this Court's  
13 Enforcement Order of those persons who Sheriff Arpaio individually lists and certified  
14 have no connection with MCSO other than that they volunteer within MCSO jails as part-  
15 time teachers or religious volunteers.

16 2. Excusing the MCSO from certifying compliance with this Court's  
17 Enforcement Order of such additional persons who Sheriff Arpaio individually identifies  
18 by name, position, identification number if any, and employment status, and if he  
19 personally certifies, by his signature, that such persons:

20 (a) are not engaged in official or off-duty law-enforcement related  
21 functions that impact members of the Plaintiff class, and

22 (b) he does not anticipate placing such persons in a position that could  
23 possibly impact members of the Plaintiff class and they are not authorized to participate  
24 in an off-duty capacity in such functions; and

25 (c) such persons have not received instruction or training from MCSO  
26 personnel about the Court's Order; and

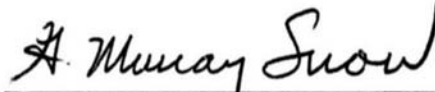
27 (d) such persons have not received or participated in, nor will they receive  
28 or participate in any MCSO or workplace communications that misrepresent the Court's



1 Order; and

2 (e) such persons will not make public statements that can be attributed to  
3 the MCSO regarding the Court's Order which misstate its terms.

4 Dated this 29th day of April, 2014.

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7 G. Murray Snow

8 United States District Judge  
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