

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

Maricopa County, Arizona; Maricopa
County Sheriff's Office; and Joseph M.
Arpaio, in his official capacity as Sheriff
of Maricopa County, Arizona,

Defendants.

No. 2:10-cv-01878-PHX-GMS

AGREEMENT

I. INTRODUCTION

1. The parties to this Agreement, the United States of America, represented by the United States Department of Justice ("DOJ"), and Joseph M. Arpaio, the Sheriff of Maricopa County, Arizona, represented by Jones, Skelton & Hochuli, P.L.C., agree on the terms and conditions set forth below (the "Agreement").
2. The Sheriff of Maricopa County, Joseph M. Arpaio, is the elected official responsible for the operation of the Maricopa County Sheriff's Office ("MCSO"). The Sheriff shall make reasonable efforts to ensure that employees of MCSO take all reasonable actions necessary to comply with the provisions of this Agreement.
3. On March 10, 2009, the United States informed MCSO that it was initiating an investigation under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI"), and other statutes. Among the matters under investigation was alleged national origin discrimination in MCSO's police practices and jail operations. Title VI, its implementing regulations, and related assurance agreements, require MCSO to provide the United States with access to pertinent sources of information, thereby enabling the United States to determine whether MCSO is in fact complying with Title VI mandates.
4. On March 25, 2009, the United States submitted its First Request for Documents and Information, consisting of 51 requests for documents and information. Shortly

thereafter, the United States informed MCSO that its investigation would involve document review, tours of MCSO detention facilities, and interviews with MCSO staff and jail inmates.

5. On September 2, 2010, the United States filed this action against Sheriff Joseph M. Arpaio, in his official capacity, MCSO and Maricopa County.
6. Pursuant to DOJ's requests, DOJ has completed and MCSO has allowed, requested tours of Maricopa County Jail facilities, as well as interviews of MCSO staff, detention officers, posse members, and command staff, including two interviews of Sheriff Joseph Arpaio. DOJ has also conducted interviews of inmates in the Maricopa County Jails. In addition, MCSO has produced documentation in response to each of DOJ's March 25, 2009, document requests, and is compiling additional documents to satisfy additional requests.
7. Taking into consideration the cooperation the United States has received from MCSO, and MCSO's expressed commitment to continuing cooperation, the United States has concluded that it can obtain any additional information it needs to complete its investigation without resorting to costly and protracted litigation.
8. Because MCSO's cooperation with the United States' investigation obviates the need for any further litigation, the parties agree to resolve this matter pursuant to this Agreement. Within twenty-four hours of signing this Agreement, the parties will file this Agreement in the United States District Court for the District of Arizona, together with a motion to remove the action from the Court's active docket to its inactive docket and to further stay any proceedings on the parties' pending motions for summary judgment. The parties further agree that this case will remain on the Court's inactive docket for 60 calendar days, after which time, subject to substantial compliance with the terms of this Agreement, the DOJ will file a motion to dismiss the United States' Complaint without prejudice pursuant to Fed. R. Civ. P. 41(a)(2).
9. It is the explicit intention of the parties to this Agreement that this Agreement is binding on the Sheriff's successors, should the Agreement exceed the length of Sheriff Arpaio's term as Sheriff.

II. DEFINITIONS

10. “Discriminatory policing” shall refer to law enforcement policies and/or practices by law enforcement agencies that unlawfully discriminate against an individual due to his or her national origin, race, or color.
11. “Sheriff” shall refer to the Maricopa County Sheriff and his or her deputies, employees (sworn and unsworn), and successors in office.
12. “Personnel” and “MCSO personnel” shall both refer to all persons employed by MCSO in any capacity, including the Maricopa County Sheriff, command staff, sworn staff, unsworn staff, administrative staff, and volunteers, including posse members.
13. “Documents” and “MCSO documents” shall refer to any documents or records, whether electronic or paper, in whole or in part, in the possession of MCSO, subject to DOJ’s understanding that certain documents may be subject to privacy, privilege, and/or other protections under federal and/or state laws.
14. “Effective date” shall mean the date this Agreement is signed by all the parties.
15. Throughout this Agreement, the term “substantial compliance” is used when discussing compliance under this Agreement. “Substantial compliance” shall mean that MCSO has achieved compliance with most or all components of the relevant provisions of the Agreement.

III. SUBSTANTIVE PROVISIONS

A. Access to Documents

16. MCSO shall comply with the access requirements of Title VI.
17. MCSO shall comply with all reasonable, relevant and necessary requests for documents, subject to privacy, privilege and other protections under federal and/or state laws, in their original format unless DOJ reasonably requests otherwise. Hard copy reproduction of any documentation that MCSO provides in electronic format shall occur at DOJ’s expense.
18. MCSO shall identify the software program and version required to read documents provided in electronic form, and provide any explanatory information reasonably necessary to understand the organizational scheme of the information provided.
19. MCSO shall notify DOJ within a reasonable time period but no more than 20 calendar days after receiving a request from DOJ of any inability to provide documents to DOJ outside of their original electronic formats.

20. MCSO shall, if requested by DOJ, identify the source for the response to each document request, including integral MCSO staff member(s) or volunteer(s), assisting with, compiling, and/or providing the response and any electronic or database sources utilized to provide a partial or complete response, subject to DOJ's understanding that the Sheriff may have limited ability to compel volunteers, posse members and employees to comply with any of the DOJ's requests arising under this Agreement. DOJ shall have the reasonable opportunity to communicate with said integral MCSO staff member(s) or volunteer(s), in order to better understand documents produced by MCSO, upon reasonable notice, during business hours and in the presence of counsel.
21. MCSO shall notify DOJ within a reasonable time period but no more than 20 calendar days of the effective date if a requested document does not exist.
22. MCSO shall provide DOJ with the following documents and information detailed in ¶¶ 23 to 38 of this Agreement within 45 calendar days of the effective date, unless otherwise noted.

a) General Policies and Procedures

23. All after Action Reports produced by Operations Command following large-scale law enforcement operations, often referred to as "crime suppression operations" and "workplace and workplace identity fraud enforcement operations" from July 2008 to the date of production.

b) Detention Facilities

24. MCSO's current contract with the AT&T language line service and invoices documenting usage of the service from July 1, 2008, to the date of production.
25. A Spanish language copy of the Inmate Visitation form, which shall note its original date of formulation, currently being used in its detention facilities.
26. A Spanish language copy of the Disciplinary Action Report Appeal, which shall note its original date of formulation, currently being used in its detention facilities.
27. Representative samples of Online Journal entries for the Durango and Estrella detention facilities, including a month of entries for every three month period between January 1, 2008, and the date of production.
28. Attendance lists for all ESL classes offered at the Durango and Estrella detention facilities between July 2008 and the date of production. Unless ordered to do so by a court of competent jurisdiction, under no circumstances will the parties to this Agreement disclose or circulate these attendance lists, or the names or any identifying information of any individual on these lists, to anyone other than their respective

attorneys, representatives and experts involved in this action for the purposes of this action and the related investigations.

c) Computer Aided Dispatch

29. Computer Aided Dispatch (“CAD”) Database for 2005 through 2010, as follows:
- a. The produced database should contain every table and all fields from the source CAD database maintained by MCSO. If the fields or their variables have changed between years or in any other manner, MCSO shall provide a written explanation of the change to the extent possible and subject to limitations and/or restrictions imposed by the CAD vendor (Northrop Grumman Public Safety, Inc. (“NG”)) on MCSO's dissemination of such information.
 - b. The produced database shall be accompanied by an explanation describing in detail the meaning of the various tables and fields in the database and the meaning of the values that may be used for each field. This explanation should also include who is responsible for inputting data into each field, i.e., the officer, the dispatcher, some other individual or whether the fields are completed automatically by the CAD software. Further, the explanation should identify any field that is routinely left blank as a matter of practice or policy. MCSO will provide any information requested pursuant to this paragraph to the extent possible and subject to limitations and/or restrictions imposed by the CAD vendor (Northrop Grumman Public Safety, Inc. (“NG”)) on MCSO's dissemination of such information.
 - c. The produced database should be accompanied by a complete and unfiltered Premise Information file, along with an explanation of the function of the Premise Information file. MCSO will provide any information requested pursuant to this paragraph to the extent possible and subject to limitations and/or restrictions imposed by the CAD vendor (Northrop Grumman Public Safety, Inc. (“NG”)) on MCSO's dissemination of such information.
 - d. The produced database should be identical to the source CAD database, filtered only according to the years requested. MCSO will provide any information requested pursuant to this paragraph to the extent possible and subject to limitations and/or restrictions imposed by the CAD vendor (Northrop Grumman Public Safety, Inc. (“NG”)) on MCSO's dissemination of such information.
30. The names of MCSO personnel who are most familiar with the sources of information described in ¶29, specifically, all fields of the CAD database, including those that are presently unused and how all fields are populated, including fields listed as inaccurate. These personnel shall be made reasonably available for questions concerning the CAD database. Such MCSO personnel will provide any information requested pursuant to this paragraph to the extent possible and subject to

limitations and/or restrictions imposed by the CAD vendor (Northrop Grumman Public Safety, Inc. ("NG")) on MCSO's dissemination of such information.

31. The names of MCSO training personnel, including Field Training Officers, who are most involved in training MCSO personnel concerning the use of the CAD system.
32. The list of all MCSO personnel categories who make use of the CAD system, including:
 - a. Names of MCSO dispatchers who use the CAD system.
 - b. Names of the software specialists knowledgeable about the Mobile Data.
 - c. Terminals used by MCSO personnel to interact with the CAD system.
33. MCSO shall make the personnel described in ¶¶ 30 to 32 of this Agreement available for interviews in a manner consistent with previously agreed-upon terms as detailed in the January 14, 2011, and January 20, 2011 letter exchanges between the parties. Such MCSO personnel will provide any information requested pursuant to this paragraph to the extent possible and subject to limitations and/or restrictions imposed by the CAD vendor (Northrop Grumman Public Safety, Inc. ("NG")) on MCSO's dissemination of such information.
34. All policies, procedures, training manuals, and standard operating procedures regarding use of the sources of information described in ¶29. MCSO will provide any information requested pursuant to this paragraph to the extent possible and subject to limitations and/or restrictions imposed by the CAD vendor (Northrop Grumman Public Safety, Inc. ("NG")) on MCSO's dissemination of such information.

d) Oversight and Accountability

35. All use of force forms completed and submitted by MCSO law enforcement officers from September 2008 through March 2009.
36. All documents relating to Internal Affairs investigations concerning allegations of excessive use of force and/or discriminatory policing by MCSO personnel initiated from 2008 to the date of production.
37. All current or former MCSO personnel recommended for corrective action, discipline, suspension, or termination, as a result of excessive use of force and/or discriminatory policing, including whether discipline or corrective action was imposed and the nature and duration of any discipline or corrective action imposed, from January 1, 2007, to the present.

B. Access to Personnel

38. MCSO shall continue to provide DOJ with reasonable access to MCSO personnel in a manner consistent with previously agreed-upon terms as detailed in the January 14,

2011/January 20, 2011, letter exchange between the parties, and DOJ will, in light of the access to MCSO personnel that DOJ has received, make reasonable efforts to limit further access to those MCSO personnel necessary to conduct its Title VI assessment. The January 14, 2011/ January 20, 2011, letter exchange is included in this Agreement as Appendix A.

IV. IMPLEMENTATION AND COMPLIANCE

39. Substantial compliance with this Agreement will be based on the entirety of the Agreement.
40. This Agreement shall be binding on all successors, assignees, employees, of MCSO, subject to DOJ's understanding that the Sheriff may have limited ability to compel volunteers, posse members and employees to comply with any of the DOJ's requests arising under this Agreement.
41. In the event any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.
42. Each party to this Agreement shall bear the cost of their fees and expenses incurred in connection with this Agreement and any litigation directly related to this action (*United States v. Maricopa County, et al.*, No. 2:10-cv-01878).
43. DOJ shall notify MCSO of any material instance(s) in which it maintains that MCSO is not in substantial compliance with this agreement and has failed to carry out the requirements of this Agreement by providing a written Notice of Non-Compliance.
44. In the event that DOJ provides MCSO with a Notice of Non-Compliance, MCSO agrees to reasonably attempt to resolve the issues set forth by DOJ in its Notice Of Non-Compliance within 15 days following its receipt of a Notice Of Non-Compliance.
45. If the parties cannot reach an agreement within the 15 calendar days following the receipt of a Notice of Non-Compliance, the parties agree to enter into mediation under the direction of a magistrate judge or any other neutral party appointed by the Court and to engage in good faith negotiations with such a mediator to resolve such differences promptly and effectively. These negotiations will last for a maximum of 10 business days from their inception.
46. If DOJ and MCSO fail to reach an agreement at the conclusion of mediation, DOJ is not limited in any fashion in pursuing its law enforcement obligations, including having this case restored to the Court's active docket and seeking enforcement of the Agreement by the Court, or seeking rulings on the parties' cross motions for summary judgment, or pursuing any further motions or remedies under federal and/or state laws. Similarly, if an agreement is not reached at the conclusion of mediation,

MCSO is not limited in any fashion in having the case restored to the court's active docket, seeking enforcement of the Agreement by the Court, seeking a ruling on the parties' cross motions for summary judgment, or pursuing any further motions or remedies under federal and/or state laws.

V. TERMINATION

47. If DOJ determines that MCSO is in substantial compliance with the provisions of this Agreement, DOJ shall so state and memorialize its determination in writing to MCSO 55 days after the effective date, and, 60 calendar days after the effective date, DOJ shall move to dismiss the case from the Court's inactive docket. Non-compliance with mere technicalities will not constitute failure to maintain substantial compliance.
48. Within twenty-four hours of signing this Agreement, the parties will file this Agreement in the United States District Court for the District of Arizona, together with a motion to remove the action from the Court's active docket to its inactive docket and to further stay any proceedings on the parties' pending motions for summary judgment. The parties further agree that this case will remain on the Court's inactive docket for 60 calendar days, after which time, subject to substantial compliance with the terms of this Agreement, DOJ will file a motion to dismiss the United States' Complaint without prejudice pursuant to Fed.R.Civ.P. 41(a)(2).
49. This Agreement terminates when the Court enters an order dismissing the case without prejudice from its inactive docket or otherwise terminates the subject action.
50. Seventy-one (71) calendar days after the effective date, if MCSO maintains that it has reached substantial compliance with this Agreement, MCSO may file with the Court a motion to terminate the Agreement and to dismiss the action on the basis that MCSO has substantially complied with the terms of the Agreement. MCSO must provide DOJ with 10 calendar days notice of its intent to file such a motion, during which period DOJ and MCSO shall coordinate and discuss any areas of disagreement and attempt to resolve the outstanding differences.
51. Failure by any party to enforce this entire Agreement, or any provision thereof, with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.

This Agreement between the United States of America and the Sheriff of Maricopa County, Arizona, is signed on behalf of the United States by the following:

/s/ Amin Aminfar

By:

Thomas E. Perez, Assistant Attorney General

Dennis K. Burke, United States Attorney

Roy L. Austin, Jr.

Matthew Colangelo

Jonathan Smith

Avner Shapiro

Peter S. Gray

Laurie A. Gelman

Amin Aminfar

Sergio Perez

U.S. Department of Justice

Civil Rights Division

950 Pennsylvania Avenue, N.W.

Washington, DC 20530

Michael M. Walker

Assistant U.S. Attorney

Two Renaissance Square

40 North Central Avenue, Suite 1200

Attorneys for the United States

This Agreement between the United States of America and the Sheriff of Maricopa County, Arizona, is signed on behalf of the Sheriff of Maricopa County by the following:

/s/ Joseph J. Popolizio

By:

William R. Jones, Jr.

John T. Masterson

Joseph J. Popolizio

Jones, Skelton & Hochuli, P.L.C.

Attorneys for named Defendants

Joseph M. Arpaio and Maricopa

County Sheriff's Office

Appendix A



JMS:AMS:AA:dh
DJ: 207-8-8

*Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530*

January 14, 2011

Via Facsimile and U.S. Mail

Mr. John T. Masterson
Mr. Joseph J. Popolizio
Jones, Skelton & Hochuli, P.L.C.
2901 North Central Avenue, Suite 800
Phoenix, Arizona 85012

Dear Messrs. Masterson and Popolizio:

I trust all is well with you both. I am writing because there are a number of matters on which I would either like to reach agreement or confirm we are in agreement prior to the Department of Justice ("DOJ") commencing interviews of Maricopa County Sheriff's Office ("MCSO") personnel on January 24, 2011. Additionally, there are certain documents that we need your cooperation in obtaining prior to the interviews going forward.

As we have discussed in our telephone calls and emails, DOJ requests that we use as a framework for conducting our interviews the parameters set out in the United States' proposed agreement document which we forwarded to you on November 30, 2010. We are also asking for the discretion to conduct the interviews at the U.S. Attorney's Office. In sum, we are asking you to agree to the following interview parameters:

- A. The United States will select at its discretion the MCSO personnel and inmates that it will interview to ascertain compliance with Title VI and its implementing regulations.
- B. The United States will select a reasonable number of MCSO personnel to interview, to not exceed (1) 40 personnel involved in its police enforcement operations; (2) 50 personnel involved in its jail facilities; and (3) 150 inmates.
- C. The United States may, at its discretion, interview MCSO personnel and inmates multiple times, but such interviews of MCSO personnel will not exceed a combined five hours.
- D. The United States may, at its discretion, conduct interviews while accompanied by interpreters and persons employed as its consultants.
- E. MCSO will take all reasonable efforts to make personnel and inmates requested for interviews by the United States available for such interviews, including issuing such orders as may be necessary to assure availability of MCSO personnel.
- F. MCSO will promptly make available MCSO personnel and inmates requested for interviews by the United States. If MCSO personnel or inmates are not available within 24 hours of the United States' request for

-2-

- an interview, Defendants will assure, barring exceptional circumstances beyond the Defendants' control, availability within a period not to exceed three days from the date of the United States' request.
- G. Interviews of personnel below the command staff level, and all inmate interviews, will not include attorneys or others representing the interests of the Defendants. Attorneys representing individual personnel and inmates may be present.
- H. Inmate interviews will take place in confidential legal interview rooms, without the presence of any MCSO recording devices of any kind.
- I. The United States will have the discretion to ask MCSO personnel and inmates to consent to having their interviews recorded by the United States.
- J. The United States has discretion to conduct interviews of personnel at the U.S. Attorney's Office.

By close of business Thursday, January 20, 2011, please inform us in writing, either by letter or email, as to whether you do or do not agree to each of the above described parameters. Where you object to a parameter please let us know why. Our goal in being explicit about obtaining your agreement in relation to these parameters by a date certain is to eliminate ambiguity which may undermine our efforts to go forward with these interviews as scheduled.

Additionally, we request that you forward to us as soon as possible, but in any event no later than the close of business Wednesday, January 19, 2011, the following:

- The operation manual and associated policies for each MCSO subcomponent; and
- A list or roster with names of MCSO employees and volunteers that includes the unit or component for which each MCSO employee or volunteer works.

As I have indicated in earlier telephone conversations and emails relating to these items, we need both the policy documents and roster of names to prepare for our interviews. Because we are interested in obtaining this information as quickly as possible, we request that you provide us with what you have that is most readily available first, and then supplement at a later date if necessary. As always, any assistance you can provide us is greatly appreciated.

Sincerely,



Avner Shapiro
Special Counsel
Special Litigation Section

JS&H JONES, SKELTON & HOCHULI, P.L.C.

WILLIAM R. JONES, JR.
TELEPHONE: (602) 263-1714
FAX: (602) 200-7801
E-MAIL: WJONES@JSHFIRM.COM

JOHN T. MASTERSON
TELEPHONE: (602) 263-7330
FAX: (602) 200-7846
E-MAIL: JMASTERSON@JSHFIRM.COM

JOSEPH J. POPOLIZIO
TELEPHONE: (602) 263-1741
FAX: (602) 200-7876
E-MAIL: JPOPOLIZIO@JSHFIRM.COM

2901 NORTH CENTRAL AVENUE
SUITE 800
PHOENIX, ARIZONA 85012
PHONE: (602) 263-1700
FAX: (602) 651-7599
WWW.JSHFIRM.COM

January 20, 2011

Avner Shapiro
U.S. Department of Justice, Civil Rights Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: U.S. v. MCSO, et al.
CV10-10878-PHX-GMS

Dear Avner:

I received your letter of January 14, 2011, and have discussed the DOJ's listed requests with my clients. I will respond to the individual paragraphs A – J below.

- A. The United States will select at its discretion the MCSO personnel and inmates that it will interview to ascertain compliance with Title VI and its implementing regulations.**

Response: We understand that the United States can select at its discretion the MCSO personnel and inmates who will be interviewed. Obviously, it is possible that certain personnel and/or inmates may not be available on the date or time selected by the United States. First, inmates do get transferred to other jail facilities, released, transferred to the Arizona Department of Corrections or other corrections facilities and/or may even be receiving medical treatment and care in our facility or other facilities. We will try to make personnel available according to your schedule. Again, there may need to be changes due to transfers, vacations, off-duty status, or many other reasons for any requested individual to be unavailable. We will work with you at all times during these interviews in an efficient manner and according to plan. We do request that you take note we are trying to avoid expenditures of unnecessary overtime for the interviews of MCSO personnel. We had raised that concern with you previously.

JONES, SKELTON & HOCHULI, P.L.C.

January 20, 2011

Page 2

- B. The United States will select a reasonable number of MCSO personnel to interview, not to exceed (1) 40 personnel involved in its police enforcement operations; (2) 50 personnel involved in its jail facilities; and (3) 150 inmates.**

Response: You may interview (1) 40 personnel involved in MCSO police enforcement operations; (2) 50 personnel involved in the MCSO jail facilities (you have already listed 50 personnel involved in MCSO jail facilities for interview; we are assuming that you are not requesting an additional 50); and (3) 150 inmates (again, my understanding is that you have already interviewed approximately 100 inmates; we are assuming you only intend to interview 50 more).

- C. The United States may, at its discretion, interview MCSO personnel and inmates multiple times, but such interviews of MCSO personnel will not exceed a combined five hours.**

Response: We find it difficult to understand why the DOJ needs to utilize five hours for these rather straightforward interviews. Most depositions in full blown lawsuits do not take five hours, at least in this jurisdiction. We understand that you may wish to interview personnel and inmates on more than one occasion and agree to that. We suggest, however, that the sum total of each or, if appropriate, multiple interviews not exceed three hours in total.

- D. The United States may, at its discretion, conduct interviews while accompanied by interpreters and persons employed as its consultants.**

Response: We understand that you may need interpreters while conducting certain of the inmate interviews. We have no problem allowing interpreters to be present. We also understand that you wish to have consultants present at the interviews. We agree to that as well, but request that you provide the name and curriculum vitae of all proposed consultants at least one day prior to any interview.

- E. MCSO will take all reasonable efforts to make personnel and inmates requested for interviews by the United States available for such interviews, including issuing such orders as may be necessary to assure availability of MCSO personnel.**

Response: As stated above, MCSO will make all reasonable efforts to make personnel and inmates available. Availability may depend upon those circumstances discussed above and other circumstances which may arise at the times of the particular requests. We are hesitant to “order” employees to appear. Some employees may be hesitant to do so. We will certainly encourage all requested employees to appear for their interviews as requested and will

JONES, SKELTON & HOCHULI, P.L.C.

January 20, 2011

Page 3

explain the interview process to them prior to their interviews so that they will understand the process and not feel threatened by the DOJ's intrusion into their daily affairs.

- F. MCSO will promptly make available MCSO personnel and inmates requested for interviews by the United States. If MCSO personnel or inmates are not available within 24 hours of the United States' request for an interview, Defendants will assure, barring exceptional circumstances beyond the Defendants' control, availability within a period not to exceed three days from the date of the United States' request.**

Response: MCSO wishes to handle this interview process as efficiently and quickly as possible. To that end, we assure you that we will provide personnel and inmates requested for interviews as quickly as is reasonable under all of the circumstances present at the time of the individual requests. As stated above, it is possible that certain requested inmates may not even be in our custody at the time of a request, or be otherwise unavailable. If we do still have particular inmates within our control, we will make them available as requested, barring exceptional circumstances which we can certainly discuss at the time in order to resolve any particular problems that may arise during the interview process.

- G. Interviews of personnel below the command staff level, and all inmate interviews, will not include attorneys or others representing the interests of the Defendants. Attorneys representing individual personnel and inmates may be present.**

Response: Initially, we agree that interviews of personnel "below the command staff level" and all inmate interviews will not include attorneys or others representing the interests of the MCSO. Attorneys representing individual personnel and inmates may be present. We consider "command staff level" for the purposes of these interviews to be sergeants and above. Counsel and other appropriate persons representing the interests of the MCSO may be available during such command staff level interviews. In addition, as stated above, we will agree "initially" to interviews of personnel below the "command staff level" without counsel or other representation. That may change at any time during the interviews. While you have indicated that you are concerned with the possibility of intimidation of MCSO personnel, we too are concerned about the possibility of intimidation. If any particular employee feels intimidated or coerced by the interview process or otherwise feel that the interview is proceeding in an unreasonable fashion, such employee may request a recess of the interview and seek advice of personal counsel or counsel representing MCSO and the interests of MCSO.

JONES, SKELTON & HOCHULI, P.L.C.

January 20, 2011

Page 4

H. Inmate interviews will take place in confidential legal interview rooms without the presence of any MCSO recording devices of any kind.

Response: Our understanding is that numerous inmate interviews have already occurred. We intend to proceed with the further interviews in the same fashion since the United States did not seem to find fault with the process that has already taken place. The interviews may also take place somewhere other than “legal” interview rooms. As we previously mentioned, we do have a concern with providing inmate access to their personal attorneys during the course of the United States’ investigation. We do not want to cease all other legal interviews during the time the DOJ is present at the jail. We have been assured that there will be no recording devices of any kind present in the interview rooms as further discussed below.

I. The United States will have the discretion to ask MCSO personnel and inmates to consent to having their interviews recorded by the United States.

Response: We agree that the United States will have the discretion to ask MCSO personnel and inmates to consent to having their interviews recorded by the United States. As a necessary part of that agreement, however, we request an authenticated copy of any interview recorded by the United States in its entirety. It seems reasonable and, moreover, fair to have the information that the United States intends to rely upon for our own use and review by counsel, consultants, and appropriate command staff. It seems reasonable to us to request copies of such recordings so that we all have the same information available to the United States.

J. The United States has discretion to conduct interviews of personnel at the U.S. Attorney’s Office.

Response: As mentioned above, we are also concerned with intimidation occurring during this DOJ interview process. It seems clear to all concerned that having interviews conducted at the U.S. Attorney’s Office would not only result in a significant waste of time for all concerned because of the unknown length of each interview and the fact that all interviewees will be “on duty” at the time of each individual interview. As we have discussed previously, it is easy to envision lines of MCSO personnel forming while waiting the completion of the preceding interview. We wish to avoid that. Also, it would be hard to imagine a more intimidating place for an interview than the U.S. Attorney’s Office. We do understand, however, some of your concerns. Due to that understanding, we propose that all interviews of personnel be conducted at the MCSO training facility at 2627 South 35th Avenue, Phoenix, Arizona 85009. As you may know, the training facility is located next to the LBJ facility. I am told that employees can reach the training facility within five to seven minutes from any of the other jail facilities. Again, and as above, we assure you that we will provide appropriate interview rooms

JONES, SKELTON & HOCHULI, P.L.C.

January 20, 2011

Page 5

and will not have recording devices present in any such rooms. Your recording devices are subject to the agreement discussed above.

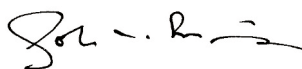
I am also going to briefly discuss your previous requests and Ms. Sreeharsha's request for help in navigating through the vast amount of information that has previously been provided to you. One of your expressed concerns is that we have not provided all of the policies and procedures requested. I have been assured that we have provided all such policies and procedures and, when this question arose in the past, a separate disk was provided to you containing only the policies and procedures requested. If you cannot find that disk, please let me know and I will have another one sent to you.

In addressing your other concerns about navigating through the voluminous boxes and computerized information, I suggest that you have appropriate persons from DOJ come to Phoenix at their convenience. I will then arrange a meeting with appropriate MCSO personnel who should be able to provide reasonable and appropriate aid to those persons. Please let me know when it would be convenient and I will schedule the meeting.

Finally, you have mentioned that you wish to conduct additional jail tours. As you know, DOJ attorneys and other consultants have already toured all MCSO jail facilities. Those tours were requested by the United States, at the times and locations requested by the United States, with those present deemed necessary by the United States. Please let me know what you need to see that you haven't already seen and we will be happy to consider that request.

I hope I have addressed all of your concerns and that we would be able to proceed with the interviews scheduled next week. As always, if you have any additional concerns or wish to discuss any other aspect of this investigation, please feel free to contact Bill Jones, me, or Joe Papolizio. We all would be happy to work with you in moving this matter to a successful conclusion.

Sincerely,



John T. Masterson
For the Firm

JTM/jag