

MSCO Internal Affairs Investigation 14-0453

Investigation completed by Don Vogel

April 6, 2015

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List of investigative tasks

On Nov. 14, 2014, I was hired to complete an independent administrative investigation into issues surrounding the receipt, knowledge, dissemination and application by Maricopa County Sheriff's Office of the court order issued December 23, 2011 by Judge Snow regarding the Melendres case. Specifically, MCSO requested that I complete the following tasks, copied here verbatim from a letter of engagement dated Dec. 18, 2014 from MCSO Chief Financial Officer Lee Ann Bohn:

Tasks on Letter of Engagement

- a. Determine if the Sheriff's Office was aware of the December 23, 2011 court order.
- b. Determine who knew about the 2011 court order and when they became aware of the order.
- c. Determine how the court order was disseminated to the commanders, supervisors and line level deputy sheriff.
- d. Determine why the Sheriff's Office believed they were not violating the 2011 court order by continuing to conduct these types of traffic stops.

Federal monitor oversight

All investigative work was done in compliance with a Federal Court order that was issued by Judge Snow on November 11, 2014.

Instructions on final report content

On Tuesday February 3, 2015 at 6:22 pm, I sent Ms. lafrate an email asking for clarification on what information MCSO expected in the content of the final report. It was unclear to me if the agency was asking me to make determinations of policy violations by MCSO employees.

On Wednesday, February 4, 2015 I received an email from Ms. lafrate addressing my question. The email from Ms. laFrate contained the following instructions,

"You are to conduct the investigation and make findings of the evidence. Neither MCSO nor me should direct you or guide you in any way. Once you complete your investigation, the final conclusion regarding whether policy violations exist will be up to someone other than you."

As directed by Ms. laFrate in her email, my report will not include any recommendations or determinations regarding any policy violations by members of the MCSO. Its purpose is to complete the fact-finding tasks listed in the letter of retention.

Interviews conducted by Sgt. Fax prior to my retention

Sgt. Fax conducted interviews with Sgt. Trowbridge on September 15, 2014, Lt Joe Sousa on November 13, 2014, and Lt. Brian Jakowinicz on November 14, 2014. Please see Sgt. Fax's attached report for information he learned during those interviews. I have reviewed Sgt. Fax's report and included that information in my findings of fact.

Interview Summaries

During the course of my investigation I conducted interviews with Sheriff Joe Arpaio, Chief Deputy Jerry Sheridan, Chief John "Jack" MacIntyre, ret. Chief Brian Sands, Chief David Trombi, Lt. Brian Jakowinciz, Lt. Joe Sousa, Sgt. Roland Gonzales and Sgt. Brett Palmer.

I have completed a summary of each interview I conducted. Please see those summaries below. Please refer to the transcripts for additional facts and detailed information.

Interview summaries:

(Numerals within parentheses indicate transcript page numbers.)

I interviewed Sgt. Michael Trowbridge twice on this case. Here are summaries of the two interviews:

Summary of my first interview with Sgt. Michael Trowbridge, Feb. 23, 2015, 1:19 pm:

Here is Sgt. Trowbridge's version of events:

Sgt. Trowbridge stated he was in Sgt. Brett Palmer's office when he overheard Palmer talk on speakerphone with Sheriff Joe Arpaio and one of the PIOs. Trowbridge does not know who initiated the call. The conversation was about some children his unit had detained.

Trowbridge said the sheriff wanted his unit to hold the children there at enforcement support until the media could arrive:

(transcript page 10)

"The sheriff said, hold those kids until I can get down there with the media" (10).

Sgt. Palmer was telling the sheriff that they could not hold the children because of the judge's order in the Melendres case, for which the sheriff's office was already "in trouble." Trowbridge said Sgt. Palmer expressed "disapproval with what the sheriff was telling him to do, or telling our unit to do" (transcript page 5).

According to Trowbridge, the sheriff persisted:

(transcript page 5)

"I think he was still pretty adamant about the kids staying there in the building until the media could get there."

(transcript page 10)

"And then, eventually, I don't remember if it was a direct order from the Sheriff or how it went down, but basically, the Sheriff was told, no, that is not what we are doing."

After the phone call, there was some confusion about what to do, and then Trowbridge thinks the children were then taken to ICE.

Trowbridge said the phone call lasted about 5 minutes and occurred sometime during his time in the human smuggling unit. He worked there from March 2011 to March 2013. He thought he had been there for at least year when this happened, but it was still early during his time there, because Palmer was still in the unit. During the phone call, a lieutenant was passing in and out of the room – that was either Sousa or Jakowicz, probably Jakowicz – and other people might have been present, but Trowbridge was not sure.

Trowbridge did not remember many details about the case. He thought the detainees in that case were two younger children, possibly girls. He said he had no way to research which case it was. He was not sure which PIO was on the phone, except he knew it was not Lisa Allen. The names of the other PIOs at the time were Deputy Jeff Sprong, Detention Officer Chris Hedstrom, and Detention Officer Lieutenant Brandon Jones.

He said it was “not unusual” to find the sheriff involved in events at their unit; the sheriff and a PIO had once called him at home during breakfast to get specifics on a case from the prior night in which the unit had “caught” a man who had been deported 13 times (9).

(transcript pages 10-11)

“Again, I don’t know if it was one of those things where he initiated it, the PIO , or the Sheriff would be very involved any time there is kids or any time there is special circumstances,” Trowbridge said (9).

“I know when I was the supervisor on an event when that happened, I would have the detention officers – no matter what the higher command said, I would have the detention officers get those kids to ICE as quick as possible, because I knew it would create a media circus and then just get blown out of proportion. So as soon as we would get to the building, I would tell usually Montoya, one of the detention officers, “Hey, call ICE, hurry up. Let’s get these kids out of the building.”

Summary of my second interview with Sgt. Michael Trowbridge:

I interviewed Sgt. Michael Trowbridge a second time on April 2, 2015, at 3:30 p.m. This interview was on the telephone. Here is my summary:

Sgt. Trowbridge said he doesn’t remember exactly how he learned of the Dec. 23, 2011 court order, probably by “word-of-mouth,” and then researched it himself to learn more about it. Soon afterward, he attended at least one meeting in which it was discussed with the staff, with MCSO attorneys present. He said nothing at all changed about the way they conducted business after the court order.

His understanding of the Dec. 23, 2011 court order was that it said they were not allowed to detain people to check immigration status solely based on race or ethnicity; they needed other indicators. Also, when they detained someone on a human smuggling investigation, they had to question the detainees to see if they admitted to being in the country illegally in order to establish that portion of the element of the smuggling crime. They called ICE for the determination if there was a language barrier, or if the detainees were children, or if there was no state conspiracy charge. In those cases, ICE could make the determination over the phone.

At the time, supervisors would know what the line-level deputies were doing because that information was in the shift summaries.

He said that MCSO no longer detains people for immigration status.

Summary of my interview with Sgt. Roland Gonzalez, Feb. 20, 2015:

Sgt. Roland Gonzalez said he did not have any specific recollection of the speakerphone call in question: (the call witnessed by Sgt. Trowbridge between Sgt. Palmer and the sheriff, during which Sgt. Palmer told the sheriff he could not hold detainees because of the Melendres court order, while the sheriff kept insisting he do so). Gonzalez said something like that could have happened with him in the room, but he does not remember such a call.

He said it was not unusual for the supervisors in the human smuggling unit to have to call the sheriff when they detained people. Sometimes, the media and PIO showed up took footage of the transfer of detainees to border patrol. Gonzalez said this typically occurred when MCSO did not have enough information to charge the detainees, and ICE or LEAR did not want to take the detainees and MCSO had to call border patrol to take them.

(transcript page 11)

“But there are times where we would wait for the PIO to show up or media to show up, and we release our guys we take into custody to border patrol.”

Gonzalez said he personally never called the sheriff, and did not think the sheriff knew him by name, although he had often been in the sheriff's company when the sheriff showed up at the substation when his unit had detained large groups of people.

He said he has witnessed only one speakerphone call to Sheriff Arpaio. It was placed by Sgt. Palmer. In that case, his unit had detained a group of men with one juvenile female from Mexico. Gonzalez became case agent. Put of concern for the girl's safety, the deputies were trying to find her parents or send her to ICE or LEAR, or somehow separate her from the group of detained men, but he was unsuccessful in finding her parents.

During that call, there was a conversation about charging her parents, who were in Mexico, with child endangerment, and charge the driver with “under age of 18” (8). Gonzalez did not remember any discussion during the call about a court order or not being able to hold the detainees because of lack of PC for state charges. He said there was PC for human smuggling charges on the driver.

Summary of my interview with Sgt. Brett Palmer, Feb. 20, 2015:

Here is Sgt. Palmer's account of events:

Sgt. Palmer has been with MCSO for 14 years and was in the human smuggling unit from 2008 to May of 2012. He stated that immediately after the Dec. 2011 court order, Lt. Sousa gave verbal instructions that the unit was to detain people only for state law violations and not federal law violations. Sousa might also have used email to communicate this to his subordinates, but Palmer is not sure about that. Palmer said Sousa's understanding of these instructions came from the Maricopa County Attorney's Office and MCSO's legal advisors. Palmer said he might also have been briefed by MCAO on this, but he does not remember. He attended three or four trainings with MCAO during his four years in the unit, and one of them was specifically with Enforcement Support, but does not remember whether one of them specifically dealt with the court order. Palmer said he was not provided with any documentation of the court order, except for "maybe" a PDF of the court order, which he said he read.

After the court order, based on the direction Lt. Sousa had received, the unit continued to use the same indicators for reasonable suspicion to target a vehicle for human smuggling investigations that they had used prior to the court order for "LEAR protocol" – their nickname for the practice of detaining people merely because they were undocumented immigrants. Those indicators included the following: a vehicle that was riding low to the ground, indicating it was possible carrying a lot of weight; a vehicle with very powerful shocks to keep it from riding low with heavy weight, often having its tail end higher than its front end; a vehicle registration address registered to a city too far away for a vehicle carrying a heavy load, for example: registered in Chandler, driving in Wickenburg; freedom or fallen officer plates. Those indicators are similar to the indicators used to spot a vehicle for a possible drug load investigation. The officers would use those indicators to identify vehicles to follow, then watch for any driving lapses – improper lane changes, failure to stay in a lane, etc. – to use as probable cause to conduct a traffic stop and check for human smuggling. Here is part of the explanation:

(transcript pages 6-7, lines 260-272)

"So when the December 11 order happened, I got information from Lieutenant Sousa verbally in an email or a combination thereof, um, and I understood from Lieutenant Sousa and from my chain of command, um, that the Maricopa County Attorney's Office was on board and had our own legal individuals had reviewed this order and determined that based on what the judge wrote we could continue to do business. That was the instruction I was given, provided we are enforcing the state laws of Arizona. What that translated to was if, as long as we have a, indicators of human smuggling is what I was told. Not something Brett Palmer came up with, is what I was told, if we have indications of human smuggling um, we are allowed to continue asking questions and furthering

investigation in the detainment as long as are moving forward in that regard. If the indicators go away or there are no indicators of human smuggling and all we have at that point is individual who we believe may be in the country illegally uh, we need to cease and desist on that and move them on their way. Is what I was told."

(transcript page 9, lines 355-361)

"Um, and then I went to Sousa and was like, how's this affect us? And very quickly it came down that okay, don't worry about it. This is what we're gonna be doing, this is how we gotta do it, the County Attorney's on board. This is the direction that I got as a supervisor. And from what I was being told and I'm not an attorney, from what I'm reading in the order, alright, makes sense to me. Let's go do business. So it, I didn't feel I was violating any, any uh, any order based on the way it was explained to me by my chain of command and how we were gonna do business at that point."

He said he trained his subordinates by conducting a briefing.

Palmer said he remembers a specific incident about 30 days after the Dec. 23 court order. His unit had detained a group of people on a human smuggling investigation, but found they could not support any human smuggling charges. The people they detained, however, had no money or other resources, just the clothing on their backs, and two were women and two were children. He did not want to release them onto the "streets of downtown Phoenix," so he called ICE, which refused to accept them, so he called border patrol to pick them up (transcript page 22, line 955).

While waiting to transport them, Lt. Sousa called Palmer and told him that Sheriff Arpaio wanted Palmer to call him directly to brief him on the incident. Palmer used speakerphone to call Arpaio, who told him to hold onto the detainees until Arpaio could arrive with the PIO and media to film the transfer of the detainees to border patrol. Sgt. Palmer then told Arpaio that he could not hold onto the detainees because that would be in violation of the court order. Arpaio then became very "authoritative" and ordered him to hold onto the detainees. Palmer then said he became very authoritative in response and said he would not do that, because it would violate the court order and they are already in trouble for that issue.

This is how Palmer recounted the phone conversation:

(transcript page 24-25, lines 1046-1051)

"after my explanation to, as I explained to him at that point, Sheriff it's a violation of the order, we can't keep these people here. And that's when he took a authoritative tone and says, I'm telling you, you're gonna hang onto 'em until I get there. And then I took an equally authoritative tone, I'm not doing that. Um,

that's in, that's in violation of the court order um, is what I told him. And at that point he backed down and says okay fine. Just make sure you get all their information on, on everything."

(transcript page 23, lines 989-1007)

"Yes sir, they're refusing 'em. Okay. You're not letting them go is what I'm told. At this point I get into a verbal um, professional argument with the Sheriff. Because he's the Sheriff and he's giving me, he's, he's telling me on the phone you're not letting them go, you're gonna keep them there until I get there. And I know what's happening because I've seen it happen. He's going to, and he did. He orchestrated a media release and wanted all the cameras there to showcase that this is now what's happening with the, with the situation whatever. And so I'm being ordered for all intents and purposes by Sheriff Arpaio to maintain custody of individuals that I believed I was gonna have state charges on at one point in time but now at this point I know for a fact I do not have any state charges on. And so per the letter of the order, I have no authority to detain them because they need to, something needs to happen with them but they can't stay with me. So whether I cut them loose or turn 'em over to somebody else, they can't stay with me. So I told the Sheriff I'm not doing it. The Sheriff ordered me, he says I'm telling you you're gonna hang on to 'em and I said Sheriff I'm not doing that. It's a violation of the federal order. It's a vi, it's a violation of, of what we were told we can't do. I'm not doing that. They're on a van and they're taking off right now. Uh, the Sheriff instructed me, well fine, just get me all their information so I have that for the press conference. I'm like, okay, I can do that. I hung up with him and made sure that the van departed um, as swiftly and expediently as it could."

Palmer said his office door was open and his speakerphone setting on, and present were Sgt. Michael Trowbridge and Deputy Roland Gonzalez. That was around 8 p.m., and the whole conversation with Arpaio took about 2 to 3 minutes. After the call, Palmer and his colleagues conferred mainly with facial expressions.

(transcript page 26, lines 1149-1150)

"The post phone call conversation really was not a conversation. It was more of an eye roll and a are you fucking kidding me. And that was consistent among all three of us."

Palmer said he does not remember specifics about that case and no longer has the information about it, but he said a report was written so it is on file at MCSO. Some people went to jail in that case that night for human smuggling charges, he said, so all the detainees' names should have been placed in the report.

Sgt. Palmer said a lot of bad ideas have come from higher-ups and have caused a lot of "head rolling" from the regular cops. He believes the bad ideas are not necessarily motivated, by any intention to be unethical, but rather, out of ineptness. Lt. Sousa would often be reluctantly tasked with communicating these requests to subordinates.

In one example, before the court order, Sheriff Arpaio asked about creating roadblocks to check for undocumented immigrants. Lower-level supervisors found themselves researching rules and laws so they could explain to higher-ups why police are not allowed to do that.

(transcript pages 24-25, lines 1053-1086)

DV: So you believe that the Sheriff gave you an unlawful order and you pointed that out and, and stood strong in pointing that out that he gave you an unlawful order?

BP: Yes sir.

DV: Okay. Do you know of this happening any other times?

BP: No sir. Um, I know of requests uh, different things that he wanted to do or they being the chain of command wanted to do with respect to human smuggling. Um, but as far as an actual order, no. Once we looked into it and explained to 'em, you can't do that. An example is, I got a phone call, this is before this order now. Um, I believe it is. I think it was in '09 or 2010. But an example of some of this is, uh, I get, Sousa comes to me and says okay here's a new thing. And Sousa's head would roll on some of this stuff too. Lieu, Lieutenant Sousa filtered a lot and was trying to do the right thing. He comes to me and says, okay, you're not gonna believe this. The Sheriff wants to know if we can start setting up roadblocks to do hu, human, ill, illegal alien cheeks.

DV: Was this before or after the order?

BP: This is before the order. But I'm giving you example of different things that happened.

DV: Um-hm.

BP: So, obviously the knee jerk reaction from a smart informed law enforcement officer is absolutely not. Um, but it's like, okay we need documentation of why we can't do that. So, I ended up pulling up some case law on roadblocks and when they're lawful and they're not lawful and provide that information and said okay, you can do 'em for DUI. This is stood in case law and withstood the test of the courts. You can do 'em for uh, under agency for

missing and endangered children or persons but for human smuggling or for illegal aliens, no we can't do that. That would be, that's gonna get us in trouble. So then I gave that to Lieutenant Sousa and I assume he ran it up the chain of command 'cuz I never heard anything more about it. But those are, that type of stuff, that one sticks out of head because it was so ridiculous to me. Um, but other stuff similar to that would happen. You know, here and there.

Another time, a high-level supervisor wanted deputies to conduct surveillance to investigate a complaint letter about "Hispanic" men sleeping and relieving themselves on private property, in order to determine whether they were undocumented. Palmer called these "silly requests" (25).

(25, lines 1107-1110, 1112-1120)

"That type of stuff is what I'm referring to. Um, like, uh, there would be complaint letters come in and uh, we would get, an, an instruction coming down about well, can you guys look into going, can you guys, us, being HSU, and this came from Chief Sands mostly, um, where he got it from I don't know (...), um, can you guys look into going out to this area of town and (...) and look at ille, uh, some Hispanic guys are hanging out on the corner here. They're urinating and, and uh, now pissed and pooping all over the place out here by these businesses. And it's starting to bother people and might, they're probably gonna be illegal aliens and we would tell 'em no, we're not real comfortable doing that because we're a, we're a human smuggling unit that's supposed to be doing drop house interdiction uh, on the highways and investigations. We don't wanna start look, doing, doing uh, silly things like doing surveillance on guys that are hanging out on private property and that, you know, unless we see a, a crime, okay but, you really want us to go out and do that. So it's silly things like that."

Also, about two weeks before this interview, Palmer said he met with Chief Sheridan to ask why he had been passed over for promotion to lieutenant twice. Sheriff Arpaio was present but did not speak. Palmer was neither promised nor denied a promotion during that meeting. During the same meeting, before they discussed the promotion, in a separate and unrelated conversation, Palmer was told by Chief Sheridan that after the court order, Palmer created some email messages with possible scenarios for HSU patrol deputies to use, to help them determine when it is okay to detain an individual for a human smuggling investigation, and when it is not okay to detain them. He does not recall those email messages.

Summary of my interview with Chief Brian Sands, Feb. 25, 2015

Chief Brian Sands gave the following version of events:

He had oversight of the Human Smuggling Unit during his entire tenure as chief and deputy chief. Usually, his contact with MCSO attorney Tim Casey regarding this case focused on scheduling deputies for depositions. But very soon after the court order was given, Casey brought it to Sands, and Sands read the entire court order and spoke with Casey about it.

Sands said understanding of the court order was that it meant MCSO was not allowed to detain people for being undocumented, but MCSO could still hold them for questioning if it was building a case against human smugglers. Also, if there were no state charges applicable on the detainees, MCSO had to release them – not call immigration and wait for pickup, but release them immediately.

(transcript page 13)

BS: Well, I had discussion -- well, after my -- I had a discussion with Casey about when he made me aware of prior to reading it, and my feeling was that -- well, it is not my feeling. I -- and this -- I had a conversation with Casey about this, and Casey felt that saturation patrols would no longer be allowed. But -- and I brought up, well, you know, the enforcement of the state law with the human smugglings, and he said it was his belief that that could be enforced. And at the close of our meeting, it wasn't very long, he told me he had to meet with Sheridan, and by Sheridan...

Casey then told Sands that Casey had to meet with Sheridan.

The biggest difference he noticed in the way MCSO conducted business before and after the court order was that saturation patrols immediately stopped after the Dec. 23, 2011 court order.

Sometime in late December or early January -- definitely within less than one month -- Sands spoke with Chief Deputy Jerry Sheridan and Sheriff Joe Arpaio about the court order. He does not know whether they read it or merely relied on attorney explanations of it. Arpaio discussed the court order with Sands and told him MCSO could still investigate human smuggling. Sands said there were differences in how he and Arpaio interpreted the court order, but he never did explain those differences clearly during the interview. Here are the pertinent transcript excerpts showing what he did explain about that:

(transcript pages 13-14)

BS: Shortly thereafter, I was in contact with the Sheriff and Sheridan, and we discussed the order. And Sheridan told me that he had made arrangements for

Casey to brief the Human Smuggling Unit on the court order. And so I assumed at that point that he, obviously, didn't talk to Casey, and the Sheriff brought up the point that we could still do the human smuggling law with the state law and that we weren't going to do any saturation patrol. And I brought up the fact that shouldn't we put that order out to everybody, not just – and he said, no, we are going to do what our attorney tells us to do, and we are still going to continue investigating the state laws.

Sands seems to directly contradict himself about whether he and the sheriff disagreed in their interpretation of the court order. In the excerpt below, Sands specifically said the sheriff disagreed with him. Yet he doesn't offer details about how. His explanations below of his and the sheriff's interpretations differ only in that Sands' interpretation is more specific, and Sands' explanation of the sheriff's interpretation is more general:

(transcript page 18)

DV: Do you have any additional conversations with Sheriff Arpaio about the application of the order?

BS: And I probably had more than one. You know, as far as this was a well-known issue. But I do remember telling him that I felt that – and I had to use analogies with the Sheriff, because he couldn't seem to comprehend the difference between reasonable suspicion and probably cause and arrest. And I told him my version of what I thought the order meant in simplistic terms, and he disagreed with me.

(transcript pages 18-19)

DV: Can you tell me what -- what that presentation of simplistic, you know, kind of breaking it down from so many pages down to a couple of paragraphs would be?

BS: I told him it was my belief that if we were doing human smuggling cases, a state one, and say we originated it in a drop house, which was quite common, and that if we were conducting interviews there, because we believed that there is, one, maybe a kidnapping case involved or illegal transport of people for money that we could interview these people. But if we had no reason to arrest them, we were going to have to let them go.

DV: Would "let them go," does that mean basically let them go right now, or does that mean hold them for ICE, and, you know --

BS: That meant let them go right now, release them.

More about this later in the transcript:

(transcript page 22)

DV: So -- and I don't think we -- we ever -- if we did, remind me. I don't think we ever got -- got a clear answer on how did business change in the HSU from the day the unit was issued -- the order was issued? So if I'm on the outside looking in, you know, I go three, four, five, six months down the road --

BS: Well, and keep in mind, like I said, the Sheriff was adamant that, you know, they could still enforce the state law, and he felt he had legal guidance on that, or that is what he was telling everybody. And that --

DV: So the Sheriff --

BS: I felt -- I felt that order was given to Sousa and that Sousa acknowledged that. So I felt -- and I've been confident that they were doing things positive in the past as far as not violating civil or criminal laws, that they would handle it the same way.

Yet, after stating more than once in the quotations above that he and the sheriff disagreed on their interpretation of the law, he later stated that no one else's interpretation of the court order ever differed from his own.

(transcript pages 22-23)

DV: You formed an opinion on what your individual belief was --

BS: Correct.

DV: -- with the order?

At any time did anybody ever present an opinion of the direction of the order that you didn't agree with?

BS: No, I don't think so, no.

DV: So nobody ever told you, you know, the order says we are going to do this, and you are going, guys, I don't think so. I read it, and I think you are off base.

BS: No. And, typically, day-to-day tactics weren't discussed with me at my level.
(22-23)

At one point, he appears to state that in his interpretation, suspects' admissions of wrongdoing were what allowed the unit to make the human smuggling arrests:

(transcript pages 24-25)

DV: I'm just wondering, if you don't have the ability to satisfy an element of the crime, how can you be expected to enforce the statute?

BS: I -- I -- you know, it takes a lot of admissions of wrongdoing. Even before that court order that is generated, it was --

DV: It was --

BS: No, it was difficult to make those cases.

Even the federal monitor, (City of Chandler) Chief Sherry Kiyler, tried to get clarification by asking Sands to compare the difference between his and Arpaio's interpretations using the same scenario for both. But Sands' response was just as unclear. See transcript pages 33-34 for that.

Sands provided other circuitous responses to questions, such as this one:

(transcript page 25)

DV: Was the enforcement of the state statute used to circumvent the Judge's order and continue to do investigation into immigration?

BS: I don't think it was intentionally done that way, but it was -- the Sheriff was adamant about enforcing the state law and was convincing everybody that he had the legal opinion to do such. (25)

Sheridan told Sands that he had made arrangements for attorney Casey to brief the Human Smuggling Unit on the order. Sands later spoke to Sousa, who told him he had spoken to Casey about the court order but Casey had not briefed the deputies. Sands then told Sousa that Sheridan wanted the deputies to be briefed by Casey, and asked Sousa whether he wanted Sands to call Casey. Sousa said no, he would take care of calling Casey to arrange that himself.

Sands said he had some health problems recently, and he felt Sheridan was using that as an excuse to leave him out of major decision-making and circumvent the chain of command by giving orders directly to Sands' subordinates instead of doing so through Sands, and transferring whole units several levels below Sands, without Sands' knowledge.

Sands said he also told Chief Dave Trombi to read the order, but did not know whether Trombi read it. Sands said he had a brief conversation with Trombi about the order, during which Sands told Trombi that the Sheriff "seems adamant that we can enforce the state law, and I remember telling Trombi, I hope he is correct on that, but he seems to have developed that from legal counsel" (23).

He was shown Casey's email message dated Dec. 23, 2011, addressed to Sands, McIntyre, Sheridan, and Sousa, and copied to Tom Liddy, Eileen Henry and James Williams, importance "high." Sands said he recognized that email message, although it looked different. He said he didn't check his email personally; an assistant checked and printed it for him to read, because he didn't like to communicate electronically. "I didn't do business that way," he said.

Summary of my interview with Chief Dave Trombi:

I interviewed Dave Trombi on March 2, 2015, at 1:51 p.m. Here is my summary:

To summarize briefly, he said he didn't hear about the Dec. 23, 2011 court order in the Melendres case until late 2013 or early 2014, when the monitor team was assembled. Prior to then, he never discussed the court order with anyone. He vaguely remembers someone discussing training scenarios regarding a court order, but doesn't remember specifics about such training, doesn't remember seeing any email message about it, and even though such training "rings a bell," and never tried to research what issue that training addressed. He admitted being "negligent" in not informing himself, since he was responsible for the human smuggling unit among his other responsibilities – after all, his boss and his subordinates knew about it. He said he missed it because he was responsible for so many different areas encompassing about 300 people.

Below are some of the details of that interview. For more specifics, see the transcript.

Trombi said in December of 2011, he was Deputy Chief of the patrol bureau, responsible for patrol districts, lake patrol, enforcement support and the SWAT division. His supervisor was Chief Brian Sands. Lower-level supervisors, such as sergeants and lieutenants, often contacted Sands instead of Trombi for operational issues, and contacted Trombi more often for administrative issues.

Chief Trombi said he did not remember hearing about the Dec. 23, 2011 court order in the Melendres case when it was issued. He said the first he heard about it was when the federal monitor team was assembled, which he believed was around December of 2013 or January of 2014. He said he knew MCSO was involved in a trial in the Melendres case, and he believes that trial started in 2012. He was not aware of any orders in the case until the end of 2013 or beginning of 2014.

Until at least 2013, he does not remember anyone contacting him about the Melendres case. He does not know whether his sergeants or lieutenants were aware of the order. From the transcript:

(transcript pages 7-8)

DV: So you are telling me that the order skipped you and went to lieutenant, sergeant? Because it is – if it came in and Sands knew about it, and Sousa and Jack (Lemitz) knew about it, Palmer and Trowbridge and Powe knew about it, you are saying you didn't know about it?

DT: I have no recollection of seeing any order whatsoever. So I can't say that I – at least as I sit here today in front of you telling – to tell you that I have a recollection or any memory whatsoever of having seen it prior to the end of December – I'm sorry, the end of 2013, the beginning of 2014.

He said he cannot recall having any conversations about the Dec. 23, 2011 court order, prior to May of 2013, with Sheriff Arpaio, nor with Chief Sheridan, nor Sands, nor Sousa, nor Jakinowicz, nor Madrid, nor Powe, nor Trowbridge, or nor Palmer.

He has a very vague recollection of someone creating some type of training scenario related to the court order, but no recollection of any formulated exercises (17). From the transcript:

(transcript page 9)

DT: The idea that they were doing something like that, or some sort of training about that. So it does ring a bell, but that is all it does.

DV: Did you ever inquire about what they were offering the training about?

DT: Not that I recall.

DV: Why not?

DT: I – I don't know why I wouldn't have. I don't know why I wouldn't have asked.

He said he is the only person who opens his email. If a forensic examination showed an email about the trainings was opened by him, he would have had to be the one who opened it, but he does not remember reviewing the training scenarios.

He admits that this was "obviously something very large, something very big and something very important," so he is "certain that there had to have been conversations and such" but he cannot recall a "specific" one:

(transcript page 10)

DV: Based on what your position is in the department and your level of responsibility, did you ever inquire what – what this was and how it could – how it could affect units under your command?

DT: I don't know if I did or I didn't. I'm sorry, I can't recall.

He did say with certainty that he never had any meeting with MCSO attorney Tim Casey about the Melendres issue, then when asked again said he didn't recall.

He admits he would have kept himself informed:

(transcript page 12)

DV: Okay. If you were sitting in my shoes, how would you best reflect in your report back to the MCSO, the fact that you were the chief over this unit and people above you and people below you had knowledge of this order, but yet you are claiming you had no knowledge of this very important court order?

DT: Well, from the perspective of your seat, I would have a very dim view of the fact that I had not found a way to -- or not found a way, I'm sorry, had not inquired further.

A few lines down in the transcript, he explained how he would characterize his involvement in the situation:

(transcript page 13)

DT: I would say that I was potentially remiss with regards --

DV: You --

DT: I'm sorry.

DV: You were remiss or potentially remiss?

DT: I'm sorry, I was remiss.

DV: Okay. How?

DT: Having not become more familiar with the importance of what was taking place and the impact that it potentially could have on the bureau which I was overseeing.

DV: Would you say you were neglect in fulfilling your job responsibilities?

DT: I would say, yes.

Asked for an explanation, he said that he oversaw "a number of different divisions, districts to the tune of 300 plus deputies" while Sands oversaw one unit with 25-40 individuals. But then he admitted that as his boss, Sands was also responsible for all of the people Trombi was responsible for, and that he should have sought the information when he first heard anything about the issue, and not waited for anyone to "spoon feed" it to him". When asked what consequences he should face, he suggested "potential discipline" based on the "discipline matrix."

(transcript page 13)

DT: It still doesn't change the fact that I was negligent and should have given its due attention.

He said he did not ignore the court order intentionally. Transcript:

(transcript pages 17-18)

DV: And, then, can you explain or can you offer an explanation as to how this could have happened to where everybody above you is aware of this and talking about it in meetings and – and how you are left out and not aware that something is happening?

DT: I – I can't.

DV: What I'm trying to do is I'm trying to understand it so I can accurately reflect it –

DT: Sure.

DV: – in the report, because if I sit down right now, how do I explain this?

DT: From – from my perspective, it was more a matter that dealt with Chief Sands and that unit operationally and how they were going to conduct things or had conducted things, and I was, unfortunately, focused elsewhere.

DV: What were you focused on that took all of your – so much of your attention that you wouldn't know that something of this magnitude is going on under your command?

DT: Well, aside from the daily operations that I dealt with within my bureau and (inaudible) matters at hand, I have to go back to the fact that I should have made myself more aware and done something to educate myself as to what was – what was afoot. And that responsibility was mine.

Summary of my interview with Lt. Joseph Sousa:

On March 2, 2015, at 9:04 a.m., I interviewed Lt. Joseph Sousa. Here is the summary:

Lt. Sousa was a lieutenant in HSU from late 2007 or early 2008 until April of 2012. The biggest change in how the unit detained people came when MCSO lost its 287(g) certification. After that, he said, officers had to call ICE or border patrol, and those agencies determined whether the detainees should be held, although those agents were not present. (See also page 20.)***

Lt. Sousa said he heard about the Dec. 23, 2011 court order very soon after it was issued. He spoke with Chief Sands and MCSO attorney Tim Casey about it several times, and he believes Casey sent the order to him, along with an email message explaining the order, with parts of the order cut and pasted into the message. When he received the order, Lt. Sousa said he spoke on the phone with Chief Sands, and then had several conversations with several people in the department about it, including Sands and Casey.

Lt. Sousa said nothing changed about the way his unit approached its work as a result of that court order. At the time, he didn't think anything needed to change, because he felt – and understood through all of the communication with higher-ups and Casey – that his unit was already in compliance with the court order in the way they already did things. No higher-up in the chain of command, at any time, ever told him they were not in compliance with the Dec. 2011 court order.

However, Lt. Sousa still wanted more clarification to make sure. So he asked Sgt. Palmer to draw up some training scenarios.

(transcript page 22)

“I instructed him to do the scenarios based on the conversations with me and the conversations he had with Tim Casey.”

Palmer wrote those scenarios, and sent them to Sousa in an email message. Sousa forwarded the email message to Casey and up the chain of command. Definitely, he said, Chiefs Sands and Trombi were recipients of that message or copied on it, as well as other people. Lt. Sousa was waiting for approval, to make sure those interpretations of the application of the court order were accurate. He had no reason to believe they weren't, but wanted to be sure, and wanted approval to use them for training. However, no one ever responded to his email. He re-sent the email several times over the next few months, trying to get someone to follow up, without success. To his knowledge, there was never any training presented to members of HSU to ensure compliance with the order.

(transcript page 17)

“The – this was important to – this is why I was so upset. I didn't know how the heck I could forget this, because this string of e-mails, like I said, it -- it goes for

about -- it is -- you can tell for several months I was trying to get clarity on the Judge's order to see where are we going to go. Because in the e-mail string, I'm back and forth with Casey a couple of times. Have you reviewed this? Have you reviewed this? Copying the chiefs. It was obvious that this was important enough to me that the week before I transferred out, it is one of the e-mails I sent to the senior Sergeant Palmer and copied the incoming lieutenant. This still needs to be addressed.

I asked him why he felt the need to create the scenarios if he felt the unit was already complying with the court order. He replied that he wanted something in writing that was more specific in how it applied to different situations: "I wanted something written down, basically, that everybody said, yeah, you can do this, or no, you can't do this."

(transcript page 43, see also transcript pages 41-43.)

DV: Why would you put the changes in if what you were doing was already in compliance with the order?

JS: Whatever conversations I had -- because when I read -- I am just going back to what I read with the string is whatever conversations I had had with the Chief and Casey. (43)

He could not remember the specifics of those conversations with Chief Sands, beyond that they were imagining different scenarios, felt they are already doing it right, but wanted clarification. He said he would have to see the emails and scenarios again in order to refresh his memory before he could expand on that.

Lt. Sousa said when he left HSU in April of 2012, the last thing he did was forward the "scenario" emails to Lt. Jakowicz, who was taking his place.

Months later, Chief Sands kept calling Sousa for things he needed to get done in HSU. Sousa had to keep reminding Sands that Sousa was no longer in HSU. Sands needed to call Jakowicz. During one of those calls, months after Sousa was no longer in HSU, Sands told Sousa HSU needed some training. Sousa brought up the training scenarios, and Sand told him to tell Jakowicz about them. Sousa said he then forwarded the same email to Jakowicz again, sometime around October or November of 2012.

I showed Sousa the copy I had of the Dec. 23, 2011 email message, most of which had been redacted. He said it looked like the first email in a string to which the "scenario" email messages were attached.

Lt. Sousa said that, a long time later, when Sgt. Fax was interviewing him for this investigation, and Sgt. Fax had Sousa read the court order again during the interview, Sousa realized – and told Fax at the time – that he had misunderstood the court order all along. Without meaning to be critical, if the order had one more sentence in it, he might have understood it better:

(transcript page 39)

JS: As I sit here today and know what the Judge's intent was, no. Because as I sit here today, I know what his intent was. His intent was, if you know they are illegal, unless you have a State charge, you are not going to do it. That was his intent. Like I told Fax, and like I said, I'm not being critical, one more sentence on that order would have just made it clear as pie to me. One more sentence. If one more sentence on that order would have said, also MCSO is enjoined from detaining people for the sole purpose of being illegal for other agencies, that would have been -- then that -- if that sentence would have been in there, I would have been the first one to go to my bosses and say, hey, I'm not doing this.

Lt. Sousa said he believes, but "can't say with 100 percent certainty," he discussed the court order with Sheriff Arpaio around that time (27). However, he has "no doubt" the sheriff knew about the court order, because Sousa had a 2-minute conversation about it with the sheriff during a briefing for an identity theft case. He could not remember details of that conversation, but he remembers that was in the sheriff's office, in 2012, while Sousa was still assigned to HSU (30-32).

Lt. Sousa said he also discussed the Dec. 23 court order with the following people: Sands, Casey, Palmer.

Also, Jakowinicz and Chief Dave Trombi definitely were copied on the email about it.

(transcript pages 35-37)

DV: When you were in HSU, was Trombi part of your chain of command?

JS: He was my immediate supervisor in my last three years there.

DV: Okay. So he was there. He was there when it was kind of the hidden Sands split?

JS: Yes, sir.

DV: Okay. And there -- there is no doubt in your mind that Trombi knew about the order before you transferred?

JS: Oh, no doubt, because he was copied. That string of e-mails about the training scenarios, trying to get that done, I want to say, without having that e-mail in front of me, probably started two or three days after I was aware of the order and went on and on and on. And he was copied on that, the first two or three back and forths, trying to get clarification on those scenarios --

DV: Okay.

JS: -- for training.

DV: Did -- did you ever have a conversation with Trombi about the order?

JS: I don't remember. I just -- I don't see how I wouldn't have.

DV: Okay.

JS: You know, I talk to him quite a bit, too, so I just don't see how I wouldn't have, but I can't sit here with 100 percent certainty and tell you I did.

DV: But you had -- but you sent the e-mail to him?

JS: Oh, I copied him on those e-mails, yes, sir.

DV: And as far as the content of those e-mails, there is no doubt that you are discussing this Melendres order?

JS: Oh, yeah. It was the only order and the -- the subject line said, training scenarios reference 2011 Judge order -- Judge's order. I believe that is what the --

DV: Pretty clear.

JS: Yeah, something to that effect. So it was clear to me.

Lt. Sousa said he does not remember discussing the Dec. 23 court order with Chief Deputy Sheridan or Chief MacIntyre.

Lt. Sousa said it was difficult to do his job amid the rhetoric and publicity that the sheriff and his staff of public information officers created, especially while Sousa was short-staffed, with only two sergeants over three squads. Once, the sheriff put out a press release before a search warrant was served so that the media was present for it and undercover officers had to wear

balACLavas to avoid being recognized. Lt. Sousa said this put the undercover officers in danger.
(52)

Also, at some point in the past – Sousa cannot remember exactly when – he remembered both PIOs and Sheriff Arpaio referring to busts on identity theft busts as “immigration raids.” These references were in press releases or on camera through the mass media. He could not remember exactly when.

(transcript page 57, see also 58-59)

DV: Did you ever hear the Sheriff mention the word “immigration raids”?

JS: Like I said, I’m sure he has. I know I’ve seen him -- I’ve heard him on the news using the word “immigration raid” or “immigration sweep,” stuff like that. But I just thought -- me and Cesar Brockman, when we would be up there, Cesar was my acting sergeant for criminal employment. We would just try to set the record straight. Guys, we are not doing an immigration raid. It is a criminal search warrant.

Lt. Sousa said that in December of 2011, the unit handled undocumented immigrants in the following way:

After MCSO lost the 287G certification in 2009 or 2010, deputies no longer had the authority to determine whether someone was in the country illegally; they had to call INS or border patrol to get the determination, as long as it did not prolong the traffic stop longer than a reasonable time for a traffic stop. The rule of thumb taught in the academy was 20 minutes. But if INS or border patrol determined they wanted to hold the detainees, then MCSO would hold them beyond the “reasonable time for a traffic stop” while waiting for someone from the federal agencies to come to get them.

When shown a redacted copy of a Dec. 23, 2011 email from Tim Casey addressed to Sousa and several others in the department, mentioning the discussion they had about the court order (attachment 5), Sousa said he recognized it, but it was missing large portions.

“I know I got an e-mail from Tim Casey that had the entire order,” he said (11). He said he also saw a long version of the email that Sgt. Fax showed him during his interview with Fax. He was interviewed by Fax, and earlier by Rick Morris of IA.

Lt. Sousa said he questions why the focus of the current investigation is on the human smuggling unit, when detentions were happening districtwide.

(transcript page 16)

JS: Bottom line is, nobody ever listened -- as I sit here now and know exactly what the Judge wanted and meant, this -- that wasn't a human smuggling order. That was an office wide order. Because let's look at this. District 2 was -- we was turning over more people, was probably turning as many people over to ICE as we were.

He believes there should have been an organized training effort regarding the court order, and it should have been administered department-wide. He knows it wasn't because he never saw a "briefing boards." Later, after the Melendres trial was over, briefing boards came out routinely office-wide (45-46), and now they come out routinely about these issues.

"All this order is doing is forcing us to join the 21st century of policing," he said (55).

Summary of interview with Lt. Brian Jakowinicz:

I briefly interviewed Lt. Brian Jakowinicz about this case during an interview about a different case on April 2, 2015. The portion of the interview that applies to this case (the Melendres court order) is on pages 6-11 of the transcript. Jakowinicz said was not in HSU in January of 2012, and does not remember any phone call during which the sheriff asked Sgt. Palmer to hold detainees to wait for the media. Most of his communication with the sheriff occurred when the sheriff wanted information about a case for a press release, and the sheriff or PIOs would call and ask him if things they had written were accurate. He would usually try to persuade them to not place any information about the location of deputies' activities. Sometimes they complied.

Summary of my interview with Deputy Chief Jack "John MacIntyre:

I interviewed "Jack" MacIntyre on March 2, 2015. Here is my summary:

To summarize briefly, he said he had never been assigned responsibility over the Human Smuggling Unit. He was not exactly sure why different lawyers in the case would send him documents and copy him on emails discussing the case. As we began to specifically discuss the email message (attachment 4), which reportedly included a copy of the December 23, 2011 order issued by Judge Snow, that was sent by Tim Casey to MacIntyre and several other people MacIntyre said:

(transcript page 10)

JM: Yes. I don't think I've addressed fully this question you asked me, and that is why would I get this from Tim Casey? I don't know. I mean, I think I get a lot of things that are informational from other lawyers, because I am a lawyer. But it doesn't say, please do A, B, C, or D. And in the Melendres case, there were at least four full-time counsel assigned, and in this case, Tim Casey, Thomas Liddy, James Williams, I believe Maria Brandon. So there were two from the County Attorneys Office, two from Tim Casey's office. At this point in time, I don't think there was an appeal lawyer yet assigned. But you can't have five different people interpreting or telling somebody what a judge says.

And in this case, Mr. Casey, Mr. Williams, and Mr. Liddy, Mr. Liddy and Mr. Casey being the point people for the case, were the commanders of the ship.

MacIntyre told me he reviewed the order sometime in January of 2102, when he returned to work from a short leave.

(transcript page 11)

DV: Did you -- did you ever read the order?

JM: Yes, I did.

DV: Did you read it sometime around -- on your return in early January?

JM: Yes.

We discussed his designated responsibilities as they relate to his assignment. I asked if he is ever given additional duties or asked additional questions because he is a lawyer. MacIntyre responded:

(On Pages 17 and 18 of the transcript)

DV: So what I'm hearing you say is the Sheriff relies on you for things outside of your --

JM: I don't think we said that, but I think I said he sends me things unsolicited and unrequested on his own notion and his own belief, but it doesn't -- none of the things that I was asked about had anything to do with, please follow up --

DV: No, no, no.

JM: -- action, call, anything like that.

DV: I got it. I got it. What I'm saying is, outside of your list of responsibilities on the organizational chart, the Sheriff from time to time sends you additional duties.

JM: I don't think it is an additional duty. I think it is -- you know, it has nothing in here. It is not a duty. It is not a request for --

DV: Why does he send it to you, then?

JM: I don't know. The only person who can answer that is the person who sends it.

DV: Did you ever ask him? Hey, do you want me to do something with this? Why are you sending it to me?

JM: Well, when he wants you to do something, he will write something on it. And usually it is, you know, contact a constituent or something. But other than that, I don't know why something -- I don't know any more why he sends them to me than why sometimes Tim Casey and other outside lawyers send me huge piles of documents and/or e-mails that have absolutely nothing to do with what I'm doing. They don't ask for any action. They don't ask for a decision. They don't ask for analysis. And I think it is some sort of, I guess, belief in courtesy.

We discussed specific conversations he had with Sheriff Arpaio about the Court Order.
MacIntyre told me;

(On page 22 of his transcript)

DV: Okay. Do you ever confer with the Sheriff and just talk things over with him that may not be under your umbrella.

JM: Sure.

DV: Have you ever talked about the Melendres order with him.

JM: Yes.

DV: When?

JM: Beginning of January of 2012.

DV: Okay. Who else was present.

JM: I don't have a direct date, but it was -- it was a Monday. It was either the first or second Monday in January, and what I said was that the preliminary injunction had issued and that the preliminary injunction absolutely prohibited any detention of individuals based on presence in this country alone.

DV: And what did he say?

JM: And he said, does that mean we can't do other operations? And I said, the preliminary injunction says you cannot detain or arrest anyone based on presence in this country alone. So to the extent that that stops anything, it stops everything.

MacIntyre told me he did not have discussions with anyone about the application of the order. He did not know if there were any changes in the way the Sheriff's office operated after the order was issued. I asked him how the Sheriff responded when he told him his thoughts on the interpretation of the order. MacIntyre responded;

(Page 25 of the transcript)

JM: I don't think he made any comment back. I mean, after I said the same

thing twice, he acknowledged that he heard me, and that was that.

DV: Why do you feel you had to say it twice?

JM: I don't know that I had to say it twice. I just did.

DV: Why did you choose to say it twice?

JM: Because I think that it was important for me to very, very directly stress what was in the -- the concluding order.

DV: Okay.

JM: And slowly and enunciate. There was no question what was there.

MacIntyre went on to tell me;

(On pages 25 and 26 of the transcript)

DV: And when you read that --

JM: Yes.

DV: -- what did that tell you had to stop?

JM: That any -- any arrests, detention, street operations directed at any individual based merely on presence in this -- an illegal presence in this country alone had to be terminated.

DV: Okay. So if the Sheriff's Office had contact with an individual and there was -- they were not able to establish probable cause for the violation of a State crime, could they hold that person for a federal agency if that person was deemed to not be illegally present in this country?

JM: No.

DV: No question about that?

MacIntyre summarized his position;

(On page 26 of the transcript)

JM: You don't do it. You cannot stop anyone, detain anyone, or arrest anyone for mere presence in this country alone.

DV: Period.

We discussed the application of the order and training the members of HSU on the content and application of the Court order. Macintyre said;

(On page 28 of the transcript)

JM: Oh, I was aware of a meeting that was set up by Casey -- Tim Casey and Tom Liddy, and they may have had some of their other attorneys with them, to brief all of the Enforcement people that were involved in human smuggling. I don't know whether that meant all of the line people, but I know that they set up a meeting between themselves, Brian Sands, Joe Sousa, and there may have been others in the meeting to -- to clarify or to just let them know what the injunction states. The injunction is -- you know, it is one -- it is only a couple of sentences, but it is pretty clear. That is it.

DV: Is it reasonable -- from your dealings with Casey, is it reasonable to believe that Tim Casey would read it and have the same understanding that you walked away with? Is it reasonable to believe that? You can never put yourself in another guy's head.

JM: Yeah. I think if he read the same two sentences I read, yes.

MacIntyre reiterated he was not in a position of authority to manage MCSO's understanding and application of the order. I asked;

(On page 37 of the transcript)

DV: Okay. Do you feel that you had any ethical responsibility to help the Sheriff to understand that he needed to make the necessary changes in the department to be in compliance with this order?

JM: I think I did. And I think I told him point blank exactly what the order says and what the requirements are.

We discussed contacts he had with Chief Deputy Sheridan about the order. I asked him to tell me about conversations he had with Chief Deputy Sheridan. MacIntyre told me

(On page 41 of the transcript)

JM: I think they were exactly the same as the one I had with the Sheriff.

DV: So from what you are telling me, Sheridan was aware of this order in January of '12.

JM: Yes, I would think so.

Please see the attached transcript for details of the interview. Also, see attachment #7 for Chief MacIntyre's declaration filed with the court on Jan. 8, 2015.

Summary of my interview with Chief Deputy Jerry Sheridan:

I interviewed Chief Deputy Sheridan on February 23, 2015. For details, see the transcript. See also Sheridan's deposition with the U.S. Department of Justice on March 27, 2014, attachment 9, which is referred to several times in this interview. Here is my summary of the interview:

To summarize briefly, he said he became aware of the Melendres lawsuit when he picked it up during casual conversation in meetings and other conversations at the Sheriff's office. His understanding of the lawsuit is that it stems from a deputy who, under 287(g) authority, had detained a subject, Mr. Melendres, who had a visa to visit, but yet he was working. A phone call was made to ICE. Mr. Melendres was detained under authority of ICE, he was taken down to Phoenix at their request to do an interview to see if they were going to further detain Mr. Melendres, and they decided not to. That is the basis for the lawsuit.

I asked Chief Deputy Sheridan what his knowledge or involvement was in the Melendres lawsuit from the time he was promoted in September of 2010 until December of 2011. He said, (transcript page 7)

JS: I think it is very easy. I had almost no contact with any of the lawyers involving Melendres during that time period.

DV: Who was the point of contact in the Sheriff's Office up 'til -- and I'm not saying that it changed, but up until December 1st, 2011, who was -- who was handling it?

JS: It was Chief Sands.

Chief Deputy Sheridan said there were lawsuits and issues that the Department of Justice was looking at that were occurring in other areas of the organization. Those issues were capturing his attention. I asked Chief Deputy Sheridan to identify those issues. Chief Deputy Sheridan said,

(page 8 and 9 of transcript)

JS: There were allegations of racial profiling.

DV: Okay. Had the name -- had the Melendres case been tied to the Department of Justice overview; do you know?

JS: I believe it was, because part of the reason the Department of Justice was coming into play here was because the Department of Justice was -- I don't think I will get it right -- was looking at us possibly criminally.

DV: The DOJ was looking.

JS: The DOJ possibly was looking at us criminally, and that there were some issues about the civil rights side of the Department of Justice lawyers coming in and wanting information from us. Now Chief Sands was involved in that part, also. I was involved because of the jail side of the issue. So I'm sure there could have been some discussion about Melendres.

Chief Deputy Sheridan confirmed he was working on the DOJ issue mentioned above, Chief Sands was working on the Melendres case, and Chief Deputy Sheridan did not believe anyone was working on the "abuse of power" allegations because MCSO was not communicating with the DOJ on that case. He commented further on MCSO not communicating with the DOJ by saying;

(page 10 of the transcript)

JS: So when I took office -- and the reason I mention this is because when I took the role of the Chief Deputy, one of the first things that I did, because if you remember, the Sheriff asked me, "Jerry, please take care of this for me," was I opened discussions with the Sheriff to start talking with the DOJ again to see if we can't resolve this. And so we met with the DOJ lawyers --

DV: And to resolve this, and "this" is?

JS: To resolve this impasse with the Department of Justice --

DV: On all issues.

JS: Because -- on all of the issues, because it was obvious that they were coming after us pretty hard.

Chief Deputy Sheridan told me he does not believe he saw any reports that may have been produced or used by the Maricopa County Risk Managers office in their assessment of the Melendres lawsuit. Chief Deputy Sheridan told me he does not remember seeing any written documents assessing the potential risk the county may have been exposed to because of this lawsuit. He said any conversations with members of county government would have occurred

in an Executive Session.

Chief Deputy Sheridan affirmed he understood that Tim Casey, Tom Liddy and James Williams were lawyers representing MCSO on the Melendres case. I asked if those lawyers represent him. Chief Deputy Sheridan told me they do not represent him. Chief Deputy Sheridan also affirmed he understands that sometimes the best interest of MCSO may not always be in the best interest of each individual.

We discussed the progression of the Melendres lawsuit and his tracking of the case information. He told me;
(page 16 of the transcript)

DV: Up to December 1st of 2011, would you ask for any status or reporting from Sands on the status of the Melendres case.

JS: No.

DV: Would you -- would the Sheriff ever ask you, "What is going on with this."

JS: No.

DV: Up until December 1st of 2011 was Melendres a big deal.

JS: No.

Chief Deputy Sheridan told me does not recall any meetings prior to December 1, 2011 dealing with the Melendres case, or conversations with the lawyers until the trial had begun in 2013. He also claimed that he had not met Tim Casey until the middle of the trial in 2013.
(page 17 of the transcript)

DV: Okay. So there -- were there ever any meetings that were held -- had you ever attended a meeting prior to December 1st of 2011 that were held specifically to discuss Melendres?

JS: None that I'm aware of.

DV: Any -- did the -- did the attorneys ever come over and hold a session that you were a part of to discuss the Melendres case.

JS: No. I wasn't involved in any of those meetings. I don't know if I even met

Tim Casey. Up until maybe halfway through the trial is the first time that I remember talking to Tim Casey. I may have seen him in the office, but I wasn't involved in -- in any of that.

DV: And if I remember correctly, the trial was in '13; correct.

JS: The trial was in '12.

DV: Okay. So you met Tim Casey during the course of the trial?

JS: Yes, sir.

DV: Had you met any -- did you know Tom Liddy prior to this.

JS: I knew who he was, but, again, I didn't have much contact with him.

DV: Had you talked to -- so you hadn't talked to Casey before the middle trial about Melendres.

JS: Correct.

Chief Deputy Sheridan also reported he did not have any discussions with Sheriff Arpaio prior to December 1, 2011 on the Melendres case.

Chief Deputy Sheridan continued to explain that during the time he was promoted to Chief Deputy there were many serious on-going issues that captured most -- if not all -- of his attention:

(page 20 of the transcript)

"Now, I also want to tell you that I'm very passionate about my job and about this organization. I grew up here. I've been here since I was 18 years old. And so sometimes some of that passion leaks over to me saying things I shouldn't say on videotape, if you know what I mean. Okay? And doing some things -- I take this very seriously. The fact that I didn't pay attention to Melendres really bothers me, and I'm sure we will talk about that later when we get into my deposition. But that is where my mind was at this point in time."

We began to discuss the December 23, 2011 email that was sent by Tim Casey to Chief Deputy Sheridan, other members of MCSO and lawyers that were working on the case. I asked Chief

Deputy Sheridan if he, or anyone under his direction, ever conducted any research regarding the historical data from that email.

(page 25 and 26 of the transcript)

DV: Do you know how -- how that -- how we find that out.

JS: Well, I'm not an IT person, but I know that we, in the past, have tried to get e-mails and things, you know, from prior cases that we've worked over the years. So I have a general idea that the computer people go in to archives and see if -- you know, where the e-mail has gone, you know, who received it, that kind of thing.

DV: Basically a history of that e-mail from the moment --

JS: Sure.

DV: -- it left the Sheriff's Office.

JS: I would think it would be the metadata. I think that is the right word to use behind it.

DV: At any point in time have you ever called anyone at OET or OIT? You are probably right. I thought it was OIT. Office of information technology.

JS: You are right with OET.

DV: Have you ever made any calls to a computer person, and I will just use "computer person," because I think you and I understand that, to question if that -- if that is possible or if it exists or any phone calls to inquire any information about that.

JS: Yes, I did.

DV: When did you make that call.

JS: I saw Shelly Bunn, my chief over the Sheriff's Office information technology --

DV: M'hum.

JS: -- sometime late last year when the issue of the e-mail started to heat up.

DV: Late last year, meaning December – November/Decemberish.

JS: You know, I'm bad with judging times.

DV: We are talking –

JS: It could have been October, November, you know, maybe the first part of December. You know, it was before I received any other (inaudible), before I was notified of any -- that I was either a lead or a principal in any investigation. I was curious, because I was troubled that I didn't recall seeing that e-mail, opening it, and I wanted to know for myself, did I open it? If I did, how long did I open it? And I asked Shelly these questions. I want to know, did I open the attachment? Because it was really bothering me, because now I see the significance of that December 23rd e-mail.

DV: Okay. Did you ever call anybody over in the OIT person? Did you ever call anybody else other than Ms. Bunn?

JS: No.

DV: And what did Ms. Bunn tell you.

JS: She came back to me within the next day or two and said that information was not available any longer.

DV: Did she tell you why.

JS: She said the County doesn't keep it that long, and so I dropped it.

Chief Deputy Sheridan later told me he does not recall seeing the email during near the period of time it was sent. He has seen it several times as part of the review of MCSO compliance of the Melendres December 23, 2011 court order:
(page 30 of transcript)

DV: Okay. Do you have any independent recollection of or even vague recollection of opening the e-mail that was sent to you on December 23rd.

JS: No, sir.

We continued to discuss the email:
(page 33 of the transcript)

DV: So do you remember when the first time you became aware of this e-mail was, whether it was -- you know, how did you became aware of it for the first time I guess is a better way to ask. How did you learn of it?

JS: It was during the deposition.

DV: Which deposition? Because you've had a bunch.

JS: The -- (inaudible). During the Department of Justice deposition in March.

DV: March 27 of '14?

JS: Yes, sir.

DV: So you didn't know that this e-mail existed prior to them presenting it to you on March 27th of 2014?

JS: Well, let me answer that by saying, I certainly do not recall it at all.

We discussed a series of emails that were drafted by Sgt. Palmer (attachment 1). Chief Deputy Sheridan told me he became aware of those emails because of a review of information regarding the application of the Melendres order. I asked Chief Deputy Sheridan,
(page 40 and 41 of the transcript)

DV: After reading those e-mails is there -- is there any doubt in your mind that whatever the date on that e-mail that was sent, the date reflected on the e-mail, the person that authored it, is there any doubt in your mind after reading that that whoever wrote that e-mail wasn't aware that the Melendres order from December 23rd, 2011, existed?

JS: Certainly they knew.

DV: And the purpose of those e-mails, they were written as a result of that person's knowledge of the order?

JS: Yes. Now, it is okay for me to tell you who they are from and to; right?

DV: Yeah.

JS: (Inaudible) I believe it was from Lieutenant Sousa to Sergeant Palmer to draw up four scenarios both good and bad that reflect the Judge's order.

I revisited the question of when Chief Deputy Sheridan first became aware of the December 23, 2011 court order.

(page 42 and 43 of the transcript)

DV: Okay. When did you first become aware of the Melendres order?

JS: You have to be more specific. There has been a lot of orders. Are you talking about the December –

DV: Whenever I talk about the Melendres order, unless –

JS: That is the one, okay.

DV: -- I say a different date, I'm talking December 23rd.

JS: Okay.

DV: So, you know, at some point in time, whenever it may be, Jerry Sheridan becomes aware of this. When and how?

JS: It is May -- is it 27th?

DV: How many times have you been deposed?

JS: A dozen.

DV: This particular deposition that I am using today is March 27th, 2014. It is an examination of you by Ms. Chima (phonetic), Mr. Walker and Mr. Masterson. Who is Ms. Chima?

JS: She is the Department of Justice's counsel that deposed me that day.

DV: Okay. Walker?

JS: Walker represents Maricopa County in that litigation.

DV: Masterson?

JS: He represents the Sheriff's Office in that litigation.

DV: Okay. You became aware of it. Was that in this deposition?

JS: During that deposition, I did, yes.

DV: The first time?

JS: The first time that I recall ever hearing about the December 23rd, 2011, order that enjoined us from using race as a factor.

We continued by discussing Chief Deputy Sheridan's understanding of the judge's order;
(page 44 of the transcript)

DV: Tell me what -- what does the order say? What does it tell you guys to do or not to do in simple English?

JS: I think I just explained it to you as simple as I could. It enjoins us from using race as a factor without more to determine whether someone is in the country illegally, and it also enjoins us from using ICE's LEAR policy to detain a person so they could come and pick them up if they are in the country illegally.

DV: Basically, it tells you guys you can't enforce -- you have to use state laws in your duties?

JS: Right.

We discussed the state statutes and the elements the deputies must prove to satisfy the state Human Smuggling statute. We began to discuss the ability to make a determination if a person was legally in the county and the compliance of the court order as it relates to any human smuggling arrests that were made by MCSO after the order was issued on December 23, 2011:
(page 45-47 of the transcript)

DV: This order also states that the only person that can make a determination if the person is in this country illegally is, basically, a federal law enforcement officer.

JS: That's correct.

DV: One of the elements of the human smuggling statute is that they have somebody that is in this country illegally; correct?

JS: Correct.

DV: So if a deputy on the street pulls over a car for a State, and I will say, 28 code violation, and they are furthering their street investigation and there is not a federal officer there –

JS: Right.

DV: -- how do they satisfy the elements of the offense if nobody there can determine that somebody is in the country illegally?

JS: Well, that is what I meant earlier when I talked about the LEAR policy was no longer applicable. The ICE's LEAR policy allows for -- and we are talking now back a couple years ago, because –

DV: Well, let's talk about today.

JS: They no longer have -- ICE no longer does LEAR policy as of a few months ago. In December of 2011, the Court enjoined the Maricopa County Sheriff's Office from doing what you just said. Okay. Other law enforcement agencies were not enjoined from doing that. So ICE did have that LEAR policy for other agencies that chose to participate. But for the Sheriff's Office, this order prevented us from using ICE's LEAR policy.

DV: Correct.

JS: Okay. So we were not permitted to detain people that were in the country illegally solely because they were in the country illegally. It is just that simple. It is very simple, actually, when you read -- read it. I mean, from the street officer's point of view, it is 40 pages from the Court, but in practice, we don't worry about (inaudible).

DV: But if the State statute is still being used, State human smuggling statute –

JS: Correct.

DV: -- and one of the elements of the State statute is that they are in this country illegally, and no one in your office can make that determination, how does your office make an arrest right now for human smuggling?

JS: It is not.

DV: So would you agree that any arrest from 2011 forward for human smuggling may be in violation of this order?

JS: Yes, sir.

We discussed the possibility that deputies could be using the state statute in attempt to circumvent the court order;
(page 47-49 of the transcript)

DV: Okay. After the order came out, if an officer believed the scenario that I told you, that -- okay, now we just take a different path, and instead of using the federal laws, we use the State human smuggling laws, would you agree that he has -- he has been misinformed, and he is acting outside the order?

JS: Can you --

DV: Sure.

JS: Can you repeat that? I'm sorry.

DV: I talked to some cops, and they said, look, you know, after we got the order, we just, you know, would see a car, and it had indicators. And they talked about possibly the weight of the cargo, shocks, different things like that.

JS: Sure.

DV: And their attention would be drawn to that vehicle, because there were indicators that might be a load vehicle.

JS: Okay.

DV: So they put their attention on it and witness a violation, stop the vehicle for

that violation, and then embark on a field investigation to see if human -- if another crime may be afoot, one of which being human smuggling. And they -- and that it is okay to do that. This is after the order. You have groups of guys out there doing it. In fact, now they are telling me they consciously kind of took a different route, and instead of using the State statute to build that human smuggling case --

JS: M'hum.

DV: -- and make the State statute on these guys, but there was nobody there that could determine that the people were in this country illegally. I guess I'm asking you, one, why would the officers think that, that okay, the order came down, and it is okay doing this, but now we are doing what the office wants us to do. Do you know how that idea got in their minds? I know that you may not have at the time, but I know that you've given this a tremendous amount of attention since you learned of the order back in March of '14.

JS: Right.

DV: And I know you love the office. I have no doubt about your emotion and you want to do the right thing. And if I'm in your shoes, you know, I want some answers and I'm wanting them now and you better give them to me. I can only imagine your level of frustration, and you are going to make some demands on people underneath you to get you information. How did the cops on the street think that doing that was okay?

JS: I'm sure they heard that from Chief Sands or Lieutenant Sousa, or Tim Casey. I don't know where that came from. It certainly wasn't from me, because I wasn't involved in HSU activities I could say at all.

We talked about Chief Deputy Sheridan's reaction when he reports that he found out about the December 23, 2011 order in his DOJ deposition on March 27, 2014. He said,
(page 54 of the transcript)

JS: I was -- Don, I can tell you, I was almost in tears on the way back after this deposition, because I'm passionate about my work and what I do, and when I realized that I did not know about that order and that I let the Sheriff down, I let myself down, I let the office down. I was almost in tears walking back. And then I was furious why no one had brought this to my attention. And the only person

that I thought that I could call would be Tim Casey, because by now I'm dealing with him now.

DV: Is it your position that prior to March 27th of '14 when you called Casey that Casey never spoke with you about the order?

JS: Yes.

I directed Deputy Chief Sheridan to the transcript of his March 27, 2014 deposition that was taken by the Department of Justice. We discussed a video tape that was made of him commenting on the court order during a briefing with his deputies. He explained that the comments he made on the tape were in response to the May of 2013 order. He reaffirmed he did not know anything about the 2011 order until March 27, 2014, the date of the DOJ deposition we were reviewing. It was apparent he had read the May 2013 order. I asked; (page 58 of the transcript)

DV: Now, when you are reading the '13 order, aren't you wondering, what are they talking about?

JS: Maybe it didn't ring a bell.

DV: You know what I'm saying?

JS: Yeah.

DV: I mean, as you are reading that, there is clearly references to the '11 order.

JS: M'hum.

DV: But if the first time you heard of the '11 order was March 27th of 2014, but you were aware of the '13 order, I'm just -- kind of help me understand that better.

JS: Again, it probably didn't compute. It didn't ring a bell with me when I was -- when I read the 2013 order. Now I'm focused on, okay, here we got this final order and decision. We are going to have all of these things occur. Probably maybe was something that I just glanced over. Maybe I thought I knew about it. You know, I don't know why --

DV: Okay.

JS: -- it didn't register.

DV: And any -- how would -- help me understand any parallels that were said in that briefing that was captured on a video, any parallels between comments made in that briefing that directly or indirectly addressed the 2011 order. Because that briefing was before your March '14 deposition.

JS: I don't remember everything I said in the --

DV: Okay.

JS: -- in the briefing. I remember a couple of words, and I remember something about a Tenth Amendment violation very clearly, because I've seen it numerous times on TV. I've not gone back and re-watched the whole thing. I -- I did initially, so I don't recall the contents of it. You are not going to make me watch it again, are you?

DV: No.

JS: Okay, good. So --

DV: I guess what I'm saying is, how did you make those comments about '11 -- the '11 order that you didn't know about until '14 (inaudible) before the discovery of the order of March of '14?

JS: Did I talk about the '11 order in --

DV: Any information that is parallel to the writings of the '11 order.

JS: Oh, I don't -- I don't know if I did make those comments.

DV: Were the -- what was your information source for the comments made in that briefing that were captured on the video?

JS: It would have been the -- the findings of fact, conclusion of law from May of 2013 --

DV: Okay.

JS: -- and the final order and decision in October of 2013.

DV: Okay. So the information that was presented by you that day was all in reference to the information you learned from '13?

JS: Yes, sir.

We discussed Sheriff Arpaio's reaction to the video tape of the briefing.
(page 64 and 65 of the transcript)

DV: How does the Sheriff feel about the fact that those videos -- that you made those comments?

JS: How does he feel about them?

DV: M'hum.

JS: I don't know if I can answer that question. He never told me how he feels about them. We talked about them. He was there that day when I did that. I know he knows it is a mistake that I made. I don't know how he feels about them.

DV: Did he ever initiate an internal investigation against you?

JS: No.

DV: Did he ever offer any discipline to you or any counseling? And when I say "counseling," I mean some type of counseling through the disciplinary process where your immediate supervisor would offer you counseling on a matter.

JS: No.

We discussed the function of the Criminal Employment Unit. I asked whether, because MCSO was supposed to be out of the business of enforcing immigration, the criminal employment unit was being used to approach illegal immigration enforcement from another angle:
(page 72 and 73 of the transcript)

DV: In May of '13, out of the business but yet the Criminal Employment Unit continued to move forward with investigations. Was the Criminal Employment Unit another angle at -- at addressing any potential immigration issues?

JS: No. The Criminal Employment Unit was enforcing State law.

DV: What was that State law?

JS: State law about identity theft.

DV: Okay. Was this approach – was the focus of this unit constructed to address immigration issues but from another angle?

JS: No, not that I'm aware of.

We summarized some of the points of the interview I asked,
(page 62 of the transcript)

DV: Is there any doubt in your mind that the Maricopa County Sheriff's Office violated Judge Snow's 2011 order numerous times?

JS: No doubt.

(page 78 of the transcript)

DV: Did -- were mistakes made on your behalf regardless of other issues that we haven't -- you have never showed me these things. Should you have known about the order?

JS: Of course.

The interview concluded when I asked;
(page 80 of the transcript)

DV: Is there any -- other than your work load, is there any other contributing factors that you can cite or any defense that you can mount on your not having knowledge of the order?

JS: Somebody should have briefed me on it, and if they tried to and I wasn't paying attention because I was diverted, because I was dealing with financial reviews, I was dealing with discrepancy -- payroll discrepancy analysis of (inaudible) million dollars. I was dealing with board resolutions and resolutions and oversight. I was dealing with more oversight issues, and I was dealing with

some more resolutions concerning oversight, and, then, the final culmination of an IGA all during this time period with the Board of Supervisors to deal with everything that I got — that I inherited from my predecessor. Somebody should have grabbed me from the face and said, Jerry, wait a second. Pay attention to this. This is important. Nobody ever did that. That is where I feel I'm responsible as the Chief Deputy, and I feel bad that I wasn't aware of it.

Please see the attached transcript for details of the interview.

Summary of my interview with Sheriff Joseph Arpaio:

I interviewed Sheriff Joseph Arpaio on Feb. 24, 2015 at 10:00 am. For complete details, see the transcript. Here is a summary:

Sheriff Arpaio said he delegates most things involving MCSO's legal cases to other people: MCSO has its own in-house legal section that handles lawsuits, sometimes using outside contractors for the legal work, and sometimes taking care of it in-house. Sometimes Chief MacIntyre would look at lawsuits because he is a lawyer, but MacIntyre had no authority to do anything with them. Sheriff Arpaio said he personally does not involve himself with the details of cases, but he likes to know when he is being sued. Someone might give him a notice, and if that happens, he looks at it and gives it back to the legal section. "It is up to them and the lawyers to take care of it," he said (transcript page 11). He said MCSO has almost 4,000 employees, 800 detainees in the jails and additional people as posse members, so it is very large, and jails are prone to lawsuits.

During the time period in question, every week he held upper-level staff meetings attended by five people, including himself, the chief deputy, executive chief, and financial chief. That was on Mondays at 10 a.m. There are no agendas or minutes; people just talked about what was happening and shared ideas. If they wanted to include anyone else, they would hold separate meetings, such as the Thursday meetings, which deputy chiefs attended.

(transcript page 9)

JA: Well, I think we all got together if we were talking about some litigation, because we have lawsuits, unfortunately, sometimes, and we talk about that, but we would never get into the nuts and bolts. That was up to other people in the organization and, of course, the lawyers representing us from the County or that type of thing.

DV: Okay. What level would you talk about it in your Monday meeting or Thursday meeting without getting too much – I know you said you don't get in too much detail of the case, but what type of information would be exchanged at those meetings?

JA: Well, just that, for example, we have a lawsuit, but we didn't get into all of the details of that lawsuit. They are very complex. So that was not done in the meetings.

Sheriff Arpaio said no one ever at any time briefed him on all of the facts of the Melendres case. He never formally met with anyone about it. He said it is possible that he could have had passing conversations about it, but he does not recall any (21).

(transcript page 21)

DV: Did anyone -- on Melendres. Did you ever receive any briefings by anyone under your command to bring you up to speed on the status of that litigation?

JA: On the lawsuit?

DV: Yes.

JA: I don't recall sitting down and having -- I may have met with the attorney once or twice, but I never had the -- sat down and went through the -- all the facts of that lawsuit.

DV: Did you ever have any casual conversations with anybody so that you knew the status of it?

JA: I don't recall.

DV: If it happened, would you recall it?

JA: Probably not. I have many meetings. I can't remember years ago what I may have -- as I said, I have other duties, too, not just the Melendres case. It could happen. We could have talked, but I don't have any formal -- I don't have any recollection of formal meetings going through this.

He said information like the court order is communicated by the lawyers to the sheriff's subordinates, who are in charge of communicating it to line-level deputies: "I don't give the guidance. I have my lawyers and subordinates that give guidance," he said (46). (See also pages 82-83.) Exceptions to that rule were some relatively recent briefing boards, one of which he signed, explaining to deputies that race could no longer be used to determine whether someone was undocumented.

He said that going back to 2007, Chief Sands handled most operations involving illegal immigration, serving as the "point man" for that. Sands was the highest ranking MCSO official involved in illegal immigration operations, although Sands still reported to a chief deputy, Sheridan (20). (See also page 84.) However, Sheriff Arpaio said that he did not know whether Sheridan knew about the details of the court order (64).

Sheriff Arpaio said he cannot remember a specific call in which he ordered Sgt. Palmer to hold illegal immigrants until he arrived with the media. He said he does not give direct orders (26), and without knowing more details about that conversation, he could not recall specifically what that would have been about.

(transcript page 27)

JA: Okay. So I don't know all the details why I said this. I didn't say this to defy any order or anything else, if that is what you are talking about. So I don't know why -- there had to be some other conversation for me to say, don't release them, whether it is to call ICE, see if they can pick them up in that type of situation.

DV: Multiple people have told me that you said, don't release them until I get down there with the media.

JA: I don't know about the media.

But he does remember a call to subordinates during which HSU had specifically two illegal immigrants and ICE had suddenly started refusing to take them from MCSO. During that call, he wanted deputies to hold the detainees so the media could see them and report that ICE was not accepting them. He could not remember the details, whether the two individuals were suspected of having committed a crime or not.

(transcript pages 28-30)

JA: Well, I'm going to say again, I didn't have all -- all the -- I don't know what the conversation was about, but that was a time when I believe we were dealing with ICE, and we were making phone calls to ICE to see if they would pick these individuals up. So that was -- and also was at the time that ICE stopped picking them up, stopped picking these individuals up right after that.

DV: Okay. This is --

JA: So the point was, if I said that, it was to understand that these people were being released when in the past they were being picked up by ICE. So that is the reason if I said that.

DV: From the dialogue of the conversation that has been shared to me on multiple occasions, it was said that there was no question that what they were

telling you was, we do not have a legal right to hold them. We have got to let them go. And you said, hold them until I get there with the media.

JA: Well, if I had the media there, it was, once again, to show that ICE was refusing at that time span to pick up the -- the illegal aliens.

DV: Okay.

JA: They were in the past, and, all at once, they are not picking them up.

DV: Okay. The media is not in -- and I'm just sharing that with you because that was the context -- that is what was told to me. The media is not an issue. The fact that you told them -- I want to understand why you told them to hold them after they told you legally they can't and they are violating the court order if they do.

JA: I don't remember anything about court order, saying they are violating a court order.

DV: What do you remember about that call?

JA: I -- once again, I'm not -- I'm trying to remember. It could have happened, but if I did say that, it was, once again, that these people should have been turned over to ICE. But the bottom line is, they were released.

DV: They were released --

JA: Yeah.

DV: -- because the sergeant said, Sheriff, I'm not doing it. I'm releasing them right now.

JA: Well, I don't remember any sergeant saying that or talking -- it could have happened.

DV: Quite honestly, when I -- when I was told he said it, I thought, boy, took a lot of courage to do that.

JA: You mean the sergeant?

DV: Yeah.

JA: Well, I think they understand the Sheriff, that I don't hold anything against them, and they can do things and not be penalized for it. So that is -- if you want to call that courage, okay.

But the bottom line, they were released, and if I said that, it had to do, again, with ICE about turning these two people over to ICE, which at that time I believe they were refusing to pick them up.

Later, I offered further clarification that the detainees in that case were taken to border patrol instead of being let go, and asked why he still felt the need to hold them for media coverage:

(transcript page 40- 41)

DV: Well, they said -- why would you feel the need to tell the deputies to hold them and delay the transfer to border patrol until you got down there with the media?

JA: Well, once again, this is a critical issue where the ICE was refusing to pick up our people.

DV: M'hum.

JA: And it was publicized and so on. So this is an issue that the media should have been -- or the people of this county should have been (inaudible.)

DV: Okay.

JA: So it wasn't telling them to violate any judge's order.

Sheriff Arpaio admitted that in that case, he "could have" asked deputies to delay the detainees' transfer to border patrol, but he doesn't recall whether he did:

(transcript pages 43-44)

DV: Okay. So why not just let border patrol take them and report to the media what happened? Why do you have to say, hold them longer? Don't give them to border patrol yet. I'm on my way. Hold them. Why would you have to prolong your custody of them?

JA: You see, I'm not sure whether border patrol was coming to pick them up.

DV: But -- and I --

JA: And it takes time --

DV: Right.

JA: -- to come from Casa Grande, if that was the case, to pick them up. So we had plenty of time to --

DV: But you told them, do not release them. Don't let them go until I get there.

JA: That could have been the case. I'm not -- I'm not sure, but if you say that is what they said, it could have happened, but I don't recall that.

DV: Why would you make that statement, though? Why -- why would it be important to make -- for you to get there well after hours with the media to memorialize that with the media? Why? I don't understand.

JA: Because I'm saying, again, we were having problems --

DV: Okay.

JA: -- whether you call it political problems or otherwise, ICE refusing at that time to take, so -- which they have always done before. So I was -- if I did do this, I don't have all the facts, it was to send a message that ICE has refused to pick up these people that -- people here illegally.

He was asked whether those instructions to hold the detainees for the media would have violated the court order. His answers were almost never precise. His reply seemed to state that he didn't completely understand the order as it was written, but was following his lawyers' interpretations of the order:

(transcript pages 44-45)

DV: And is it your understanding of the order -- as we sit here today would your conduct, as described to you, then be a violation of the order as you understand it right now?

JA: No, I have no idea. Once again, when you read these orders -- as you say, I'm not a lawyer myself. I have lawyers to interpret what the -- the Judge's order.

DV: So are you telling me that as you sit here right now, you don't know the content of the 2011 order?

JA: No. I'm saying, I have reviewed the order. But, once again, the lawyers have also reviewed the order, too, and --

DV: Okay. And as you sit here --

JA: -- give advice.

Sheriff Arpaio also said he first learned about the Dec. 23, 2011 court order several months after it was issued, and long after that alleged January 2011 call asking Palmer to delay the transfer of the detainees to border patrol for publicity purposes.

(transcript pages 30-31)

JA: Well, I didn't have all the details on that. Also, when you talk about that 2011 order, I wasn't familiar with that order, the 2011 order.

DV: When did you become familiar with it?

JA: It took time. I don't even know when I was notified of it. I don't believe I was notified (inaudible) there was an e-mail that everybody was on except me. So I was not cognizant of that order until months later.

DV: Okay.

JA: So when I was saying that, I wasn't saying that pursuant to any order. Just the way we were doing it.

DV: But I think -- and I'm not trying to get into an argument with you. I'm just -- I'm just pointing out that, and Mr. McDonald's notes will even reflect that if we need to go back to it, you said at that time after the 2011 order, we were holding people and releasing them to ICE, and that conduct is strictly prohibited in that order. So why would you tell them, go ahead and hold them for ICE, or at least --

JA: I didn't realize the order at the time.

Sheriff Arpaio said he would never intentionally violate a federal court order, and that is common sense after being a federal official for 30 years.

(transcript pages 31-32)

DV: So you are telling me you -- you told them to hold them for ICE, but you didn't think there was anything wrong with that?

JA: No. I'm saying that that may have been why I said, don't release them.

DV: Okay.

JA: Because we were having a problem with ICE. I don't think the order had anything to do with it, but they started to stop picking up the -- the illegal aliens. For some reason, they were not picking them up anymore, so we had to decide what to do with them.

DV: And when you are saying, I may have said it for this reason, you are accepting the fact that you said it, because all of these witnesses --

JA: Well, if they said I said it, but it had nothing to do with defying a court order. I would never defy a judge's order.

DV: Okay.

JA: That is difficult to answer when you don't have all of the facts of why -- why did two -- I don't even know if they were involved with the human smuggling. I don't know if they were co-conspirators. At the time, we were keeping co-conspirators. So it could have been two co-conspirators.

He said regardless, MCSO has always had the option to call ICE:

(transcript pages 35-36)

JA: Okay. But, once again, the possibility always existed to call ICE if -- and I believe if that happened, they were -- they knew they were here, those two were here illegally.

DV: Okay.

JA: And it was also always the policy to call ICE to see if they would take these two people in.

DV: And was that the policy that remained in effect after the issuance of the December 23rd, 2011, order?

JA: I don't know. I don't know if that policy ever got down to the troops. I think we had a miscommunication problem over this 2011 order. I didn't know about it. I didn't read it until later.

The sheriff said he could not remember exactly when he read the Dec. 2011 court order in the Melendres case:

(transcript page 36)

DV: When did you read it?

JA: I don't recall when I -- but it was quite a bit later.

DV: Okay. It was issued --

JA: I have read it since.

DV: Okay. It was issued in, let's just call it, 2012, first day of 2012.

JA: Yeah it was December --

DV: December 23rd, 2011.

JA: And also it was Christmas.

DV: Yeah.

JA: And there was a lot of miscommunication getting this order down to the field.

DV: So let's just -- let's be safe and say January 1 of 2012, and here we sit today. Okay. So you've got less than three years in that window. Did you read the order three years ago, two years ago, one year ago?

JA: I have no knowledge when I -- it wasn't three years ago. I'm sure I read it prior to that. I mean, after the -- so I don't have a timeframe when I read the order.

Sheriff Arpaio said his current understanding of the court order is that MSCO deputies can call ICE when they come across "these subjects," but have to be careful about how long to keep them for ICE to show up (46).

(transcript page 47)

DV: So if you don't have a criminal charge, you have to release the people immediately?

JA: I would say, yes.

DV: So how could you hold them for ICE if you are releasing them immediately?

JA: That is a -- that is a good question.

DV: Okay. Do you have an answer to the question?

JA: I don't have an -- it is a legal question.

However, his answers seemed to convey some confusion:

(transcript pages 86-87)

DV: So you don't remember ever sitting there scratching your head saying, "I don't understand it. Jerry, explain this to me one more time"?

JA: No, I had some -- I've had some times where I was confused with the order and by the legal authorities. For example, I was really confused on going back when you stop a vehicle and you determine -- you know, I'm talking about legally stopping --

DV: Sure, sure.

JA: -- on a state charge, and you find out there is some illegals, and the judge says you can -- yeah, you can hold them and call ICE. But how can ICE respond if they say we want to pick them up and yet you can only hold them so long? So I'm a little confused about this. So that is an example on a lot of things that you can be confused about. But that is what the attorneys are there for, to try to alleviate or explain the situation.

DV: Okay. And it is your job to get that explanation until you are satisfied; right.

JA: It is the job of the people running the programs that I had delegated to that

specialize in that subject matter that run that operation. Whether it is the narcotics squad experts or this squad or that squad, it is their job to make sure they understand the program they are running.

He said although he often visits the field while line-level deputies are doing their jobs, he does not necessarily know the details of their interactions during those times, and does not tell them what to do during those visits either (93).

I asked the sheriff how it could be that he didn't know about the court order until several months later, yet a sergeant knew about it. His reply was, "I have no idea," but possibly someone mentioned it to the sergeant because the sergeant was in the human smuggling unit (48-49).

Sheriff Arpaio said he does not have email or use computers.

He said he didn't know about the Dec. 2011 court order until months later, even though he said he watches TV news and reads newspapers and magazines sometimes, and reads the New Times when he is in it, "which is every week" (64).

(transcript pages 65-66)

DV: If any of this stuff was in the newspaper about Melendres, is it reasonable to think you would have seen it?

JA: Yes. In fact, I would presume everyone would see it.

DV: If there was ever anything written about that 2011 order, would you expect you would have seen it?

JA: I would expect. I'm not saying which one or when, the timeframe, when I saw that particular article, but I do read the paper.

DV: Have you ever read something in the paper, and you think, boy, that is my office. I would like to know a little bit more about that. And then you go to work the next day -- or you pick up your cell phone and call Sheridan or call somebody else and say, hey, I'm reading about this. What is going on with it?

JA: Yes.

DV: Did you ever do that about Melendres with all of the publicity it got around this order?

JA: I don't -- I don't say yes or no. I may have. I'm not denying it, but I don't, in

my own mind, know specific times, excuse me, when a newspaper comes out what I do with it. I'm sure --

DV: Would it be reasonable to think that if something is getting substantial news coverage that you would have seen it?

JA: Yes.

DV: Thank you. You have PIOs in place; right?

JA: Yes.

DV: Is part of the PIO's job to monitor media reports and report anything of interest or importance to you that is in the media?

JA: Yes.

DV: Did they ever tell you anything about the Melendres order?

JA: I don't recall.

DV: If they were to tell me that they did, would you have any information to dispute that?

JA: No.

Sheriff Arpaio said the court order and resulting training and federal monitoring would improve the organization, and people make mistakes and learn from them. There has been training department-wide, and department-wide communications on the issue:

(transcript page 106-107)

DV: The communications that you sent up to your troops that you signed, were those put on the briefing boards, or were those sent out in another fashion?

JA: Briefing boards.

DV: Okay.

JA: Everybody gets it.

DV: So your message to the troops goes out on the briefing boards.

JA: Yeah. Message it. I very seldom use that.

DV: Okay.

JA: But I did on this occasion. I think we sent out 15 of these -- they are called briefing board, 15. I never got involved. And this is it. Sheriff is saying --

Q. Okay.

JA: -- race doesn't apply, even though that is another issue where the feds said it does. These other -- there are a lot of other ramifications to this whole situation. Even though the feds say you use race, the Judge said you don't use it. You stop someone on a criminal violation. So I put that out for everybody to see. Also, I -- there have been a lot of controversy about going to school. The Judge ordered everybody, including the posse, to take the course. My wife and I did it. You were there.

SK: I was.

JA: Hey, you don't know everything. It was a learning experience. We lost some people. They refused to go. They can't take 20 hours of their time, so they (inaudible.) So the training even, I can understand why the Judge did that. He wanted to make sure everybody knew what the order -- that was pretty tough to get everybody up, and we did it. We had 3,000 people. We trained them. We send that message out. So it is not like we are hiding things. We are trying to get it up.

Asked whether anyone in his upper-level command might be motivated to say something about him that isn't true, he replied,

(transcript page 23)

JA: Oh, it is a possibility. I'm not accusing anybody.

DV: Who would that be?

JA: Well, I presume it would be Brian Sands. I'm not going to get into his latest book he wrote, but --

DV: Did you read it?

JA: I just briefly read it. Why would I waste my time, the comments he made,

so — but I'm not criticizing him on that. But you asked me the question. I'm trying to be honest about this.

Attempted Metadata recovery on December 23, 2011 email from Tim Casey

Upon learning about the email sent by Attorney Tim Casey to Brian Sands, Jack MacIntyre, Jerry Sheridan, Joseph Sousa, Attorney Thomas Liddy, Eileen Henry and Attorney James Williams, I inquired about retrieving the metadata on the email in an attempt to determine who received, opened, reviewed attachments and/or forwarded the email. I contacted Mr. Michael McAndrews who is an expert in the area of forensic computer investigations. After discussing this issue with him I retained him to assist me in attempting to retrieve the metadata from this email.

On January 21, 2015, Mr. McAndrews and I met with David Sterns, Kevin Westover and Mike Echols of the Maricopa County Office of Enterprise Technology. I explained to them the information we needed and introduced Mr. McAndrews as my agent assisting to gather that information. I turned the recovery efforts over to Mr. McAndrews.

Mr. McAndrews completed progress reports to keep me apprised of the status of the recovery attempt. Please see the total of 11 attached progress reports with the following dates: January 21, 2015, January 22, 2015, two reports dated January 28, 2015, January 29, 2015, two reports dated January 30, 2015, February 4, 2015, February 5, 2015, February 6, 2015 and February 12, 2015. The Status reports are attached. (See attachment 6).

Mr. McAndrews was able to determine that although the members of the county Office of Enterprise Technology initially believed the metadata could be recovered, they were not successful in their efforts. Based on the issues encountered, Mr. McAndrews believes the best course of action would be to utilize a third-party data recovery service. Please see his attached summary report (attachment 6) for details.

Instructions on final report content

On Tuesday February 3, 2015 at 6:22 pm, I sent Ms. lafrate an email asking for clarification on what information MCSO expected in the content of the final report. It was unclear to me if the agency was asking me to make determinations of policy violations by MCSO employees.

On Wednesday, February 4, 2015 I received an email from Ms. lafrate addressing my question. The email from Ms. laFrate contained the following instructions,

"You are to conduct the investigation and make findings of the evidence. Neither MCSO nor me should direct you or guide you in any way. Once you complete your investigation, the final conclusion regarding whether policy violations exist will be up to someone other than you."

As directed by Ms. laFrate in her email, my report will not include any recommendations or determinations regarding any policy violations by members of the MCSO. Its purpose is to complete the fact-finding tasks listed in the letter of retention.

Responses to listed tasks

a. Determine if the Sheriff's Office was aware of the December 23, 2011 court order.

Some key members of MCSO were aware of the Dec. 23, 2011 court order, including personnel who were responsible for the Human Smuggling Division. An attorney had sent an email message about it and discussed it with those key personnel in phone calls and meetings. Also, it was reported by the news media, and one sergeant interviewed reported hearing it through "word of mouth" and reading about it through a news article.

Here are the points to support that conclusion:

1. Dec. 23, 2011 email message regarding court order:

(See attachment #4). On December 23, 2011 at 5:22 pm, Attorney Tim Casey sent an email to Chief Brian Sands, Chief John MacIntyre, Chief Deputy Jerry Sheridan, HSU Lt. Joesph Sousa, Attorney Tom Liddy, Ms. Eileen Henry and Attorney James Williams. The subject line of the email read, "Melendres Order on Summary Judgment". The importance was "High."

I received a redacted copy of the email from MCSO Sgt. Fax. The copy of the email I received states:

"Folks,

In Follow-up to my recent telephone call, attached is the Court's Order on the dueling summary judgement motions and class certification motion."

The information after the listed text was redacted by MCSO's attorneys, but the redacted lines of text refer to a telephone call about the court order, suggesting that Casey not only sent an email containing it, but also spoke on the telephone with someone at MCSO about it that day.

2. **Meeting(s):**

When interviewed, members of MCSO described a meeting during which the Dec. 23, 2011 court order was discussed, shortly after it was issued. Present were attorneys and upper-level management.

3. **Conversations:**

Sands and Sousa said they spoke with Casey about the Dec. 23, 2011 court order very soon after it was issued. Sousa states Casey also sent him an email explaining the court order, with parts of the court order pasted into it.

4. **Phone call between Arpaio and Palmer discussing release of detainees:**

The following was discussed in interviews:

Sgt. Palmer reported that about 30 days after the Dec. 23, 2011 court order was issued, he reminded Sheriff Arpaio about some of the restrictions imposed by the court order. That reportedly occurred in the context of a phone call. Sgt. Palmer reported that his unit had detained a group of people on a human smuggling investigation, and it was determined there were no state charges on which to hold the detainees. Sgt. Palmer did not want to release them onto the streets of Phoenix without resources so he called ICE. ICE refused to accept them, so he called border patrol to pick them up. Lt. Sousa called Palmer and told him that Sheriff Arpaio wanted Palmer to call him directly to brief him on the incident.

Sgt. Palmer said he called Sheriff Arpaio on a speakerphone. Sheriff Arpaio told him to hold onto the detainees until he could arrive with the PIO and media to film the transfer of the detainees to border patrol. Sgt. Palmer then told Sheriff Arpaio that he could not hold onto the detainees because that would be in violation of the court order. Sheriff Arpaio then became very "authoritative" and ordered him to hold onto the detainees. Palmer then said he became very authoritative in response and said he would not do that, because it would violate the court order and they are already in trouble for that issue. As the call ended Sgt. Palmer sent the detainees off to the border patrol station in Casa Grande.

Sgt. Trowbridge said he witnessed the call. Sgt. Trowbridge stated he was in Sgt. Brett Palmer's office when he overheard Palmer talking on speakerphone with Sheriff Joe Arpaio and one of the PIOs. Trowbridge does not know who initiated the call. The conversation was about some children his unit had detained.

Sgt. Trowbridge said the sheriff wanted Sgt. Palmer to hold the children until the media could arrive:

(page 10 of the transcript of Sgt. Trowbridge's first interview with me)

"The sheriff said, hold those kids until I can get down there with the media."

Sgt. Trowbridge said that Sgt. Palmer was telling the sheriff that they could not hold the children because of the judge's order in the Melendres case, for which the sheriff's office was already "in trouble." Trowbridge said Sgt. Palmer expressed "disapproval with what the sheriff was telling him to do, or telling our unit to do" (transcript of first interview with me, page 5).

According to Sgt. Trowbridge, the sheriff persisted:

(transcript of first interview with me, page 5)

"I think he was still pretty adamant about the kids staying there in the building until the media could get there."

(transcript of first interview with me, page 10)

"And then, eventually, I don't remember if it was a direct order from the Sheriff or how it went down, but basically, the Sheriff was told, no, that is not what we are doing."

After the phone call, there was some confusion about what to do, and then Trowbridge thinks the children were then taken to ICE.

Trowbridge said the phone call lasted about 5 minutes and occurred sometime during his time in the human smuggling unit. He worked there from March 2011 to March 2013. He thought he had been there for at least year when this happened, but it was still early during his time there, because Palmer was still in the unit. Trowbridge did not remember many details about the case. He thought the detainees in that case were two younger children, possibly girls. He said he had no way to research which case it was.

Sheriff Arpaio could not confirm that specific phone call, but spoke about a phone call with very similar circumstances, during which Sheriff Arpaio remembers asking subordinates to hold two detainees until Sheriff Arpaio could

arrive with the media, because ICE was refusing to pick them up – but he does not remember discussion of a court order during that conversation. See the summary of his interview for details, and pages 52-56 of his interview transcript. Here is an excerpt:

(Sheriff Arpaio's interview transcript, page 40- 41)

DV: Well, they said – why would you feel the need to tell the deputies to hold them and delay the transfer to border patrol until you got down there with the media?

JA: Well, once again, this is a critical issue where the ICE was refusing to pick up our people.

DV: M'hum.

JA: And it was publicized and so on. So this is an issue that the media should have been -- or the people of this county should have been (inaudible.)

DV: Okay.

JA: So it wasn't telling them to violate any judge's order.

5. The Palmer training emails:

(See attachments #1 and 2.) On January 11, 2012 at 11:16 am, Lt. Sousa sent Brett Palmer an email with the subject line "Putting out training reference the court order." The email was also copied to Tim Casey, Rollie Seebert, Brian Sands, Dave Trombi, Eileen Henry and Joseph Sousa. The email states:

"Bret,

Per our phone conversation write up a couple of scenarios (right way and wrong way) based on Judge Snows order to MCSO and your conversations with Tim Casey. I will have Tim review what you write up and have Chief Sands sign off on it. Once that is all done we will get with training reference putting something out in E-Learning."

Lt. Sousa went on to write in bold print:

"Judge Snows order,

The court is enjoined the MCSO "from detaining any person based solely on knowledge, without more, that the person is in the county without unlawful authority. To be clear, the court is not enjoining MCSO from enforcing valid state laws, or detaining individuals when officer have reasonable suspicion that individuals are violating a state criminal law. Instead, it is enjoining MCSO from violating Federal, rights protected by the United States Constitution in the process of enforcing valid state law based on an incorrect understanding of the law.:p.37-38.

(See attached for full ruling)"

That message clearly states Judge Snow issued a court order and uses quotes from the court order. The court order was also attached to the email. It is reasonable to believe that these recipients would have been aware of the order upon their receipt of the emails.

On January 19, 2012 at 11:24 pm, Brett Palmer responded to Lt. Sousa's request by sending him a "rough construction of an eLearning segment based on Judge Snow's order." The email contains four scenarios Sgt. Palmer constructed to use in training. This email was also copied to Tim Casey and Michael Trowbridge. The subject line of the email states "RE: Putting out training reference the court order."

The email containing the scenarios sent on January 19, 2012 by Brett Palmer also clearly addresses Judge Snow's order. Joseph Sousa and Michael Trowbridge were listed as recipients. It is reasonable to believe that these recipients would have been aware of the order upon their receipt of the email.

A printout of that string of email provided by Ms. lafrate appears to have additional email constructed later. They are too heavily redacted for us to see the content, but what is readable is that Lt. Joe Sousa sent an email dated Jan. 24, 2012, 10:20 a.m., addressed to Tim Casey. The subject line and content are redacted. That message was copied to Brian Sands, David Trombi, Rollie Seebert, Brian Jakowicz, and John MacIntyre. Another email message in the same printout, dated Jan. 24, 2012 at 11:14 a.m. is sent from Tim Casey to Thomas Liddy, and copied to Eileen Henry and James Williams.

There is also a document titled, "Defendants' Privilege Log." It does not list the Jan. 24, 2012 email from Casey to Liddy. But it lists two additional email messages: A message dated Feb. 27, 2012 from Lt. Sousa to Mr. Casey described as "e-mail regarding advice on training scenarios"; and a message dated Feb. 28, 2012 from Tim Casey to Lt. Sousa described as "E-mail regarding status of training scenario review."

6. Attorney billing records:

(See attachment #8.) I obtained a copy of Attorney Tim Casey's billing records that he submitted to Maricopa County for the work he completed on the Melendres case for MCSO. I obtained these records through a Public Records Request. The records I received were redacted by the county to protect information subject to the Attorney Client Privilege.

I reviewed the billing records from December 2011 through May 2013. I chose these dates because they are the dates directly related to the period in time I am examining.

(XXXXXX indicates information has been redacted)

- Mr. Casey did not bill any time on December 23, 2011.
- On December 26, 2011, the first business day after the December 23, 2011 order was issued, Mr. Casey noted "Continued analysis of the Courts Order and conduct preliminary research re XXXXXX (3.6); confer with J. Arpaio (.4);confer with B. Sand (.3);confer with J. Macintyre (.1); confer with J. Sousa (.5)
- On December 27, 2011 Mr. Casey notes "Based on Court's ruling, evaluate and determine XXXXX "
- On December 28, 2011 Mr. Casey notes "Review XXXXXX by chief B. Sands XXXXX"
- On December 30, 2011 Mr. Casey notes "Confer at length with J. Sousa and Chief Brian Sands re XXXXXX"

Although it is not conclusive because of the information that is redacted, I believe it is important to note that there was contact and documented conversations between Mr. Casey and Sheriff Arpaio, Chief Sands, and Lt. Sousa in the time following the issuance of the December 23, 2011 court order.

As I continued my review of the records it appeared to me that Mr. Casey was documenting time that he had dedicated to trial preparation; however, it is impossible to know the content of the conversations documented because of the amount of information that is redacted.

Please review the attached billing records for further information.

7. Reported that saturation patrols were no longer done:

In his interview, Chief Sands reported that immediately after the court order was issued all saturation patrols stopped.

8. Court filing by Attorneys acknowledging violation of the court order:

(See attachment #3.) On March 17, 2015 Ms. lafrate filed a motion in federal court titled "EXPEDITED MOTION TO VACATE HEARING AND REQUEST FOR

ENTRY OF JUDGMENT". As I reviewed the motion I noted that on page 2 line 1 it states "Defendants acknowledge and appreciate that they have violated the Court's orders and that there are consequences for these violations." The order is signed by Michele lafrate, Thomas P. Liddy and Douglas A. Schwab, attorneys for Sheriff Joseph M. Arpaio and Maricopa County Sheriff's Office; Melvin McDonald, attorney for Sheriff Joseph M. Arpaio; and Lee Stein and Barry Mitchell, attorneys for Chief Deputy Sheridan.

b. Determine who knew about the 2011 court order and when they became aware of the order.

1. Sheriff Arpaio:

- In his interview, Sheriff Arpaio reported the first time he learned about the court order was "several months" after it was issued.
- In his interview, Sheriff Arpaio reported he read the order but could not offer any information about when he read it.
- In his interview, Sheriff Arpaio reported he watches the news and also has people that monitor the media and report to him. He said he reads the New Times whenever he is in it. There was a New Times article published on Dec. 23, 2011 about the order. Sheriff Arpaio reported he never saw, or was made aware of, any reports about the 2011 court order.
- In Chief MacIntyre's interview, Chief MacIntyre reported he explained the order to Sheriff Arpaio in January 2012. Chief MacIntyre reported Sheriff Arpaio acknowledged what he said during the conversations in 2012 about the order.
- In Chief Sands interview, Chief Sands stated that about a month after the Dec. 23, 2011 court order, he discussed it with Sheriff Arpaio, and Sheriff Arpaio told him they would still investigate human smuggling.

2. Chief Deputy Sheridan:

- Chief Deputy Sheridan was listed as a recipient in attorney Tim Casey's Dec. 23, 2011 email message referencing the court order. See attachments #4 and #2.)
- In the DOJ deposition of Chief Deputy Sheridan that occurred on March 27, 2014, Sheridan reported that the first time he heard about the December 23, 2011 court order was that day, at the deposition. This dialog can be found on page 123 line 14 through page 124 line 12 of the deposition transcript, attachment #9.

- In Chief Sands' interview, Chief Sands reported that when Tim Casey brought Chief Sands a copy of the court order "very soon" after it was issued, and that Tim Casey told him that he also had to meet with Chief Deputy Sheridan.
- In Chief Sands' interview, Chief Sands reported he had a conversation with Chief Deputy Sheridan about the order soon after the order was issued.
- In Chief MacIntyre's interview, Chief MacIntyre reported he had conversations about the court order with Chief Deputy Sheridan in January of 2012.
- In his interview, Chief Deputy Sheridan reported that prior to March 27, 2014, Tim Casey never spoke with him about the order and he said he never saw Casey's Dec. 23, 2011 email message.
- In his interview, Chief Deputy Sheridan reported he read the 2013 order. I asked how he could have read the 2013 order and not recognized its reference to the 2011 order, and he stated "it probably didn't compute. It didn't ring a bell."
- In Chief MacIntyre's interview, when he was asked if Chief Deputy Sheridan knew about the 2011 order in January of 2012, Chief MacIntyre answered, "Yes, I would think so."

3. Chief John "Jack" MacIntyre:

- In his interview, Chief MacIntyre acknowledged he received the December 23, 2011 email from Tim Casey discussing the order. He received and reviewed the email in January of 2012 when he returned from vacation time.
- In his interview, Chief MacIntyre reported he read the order when he received it.
- In his interview, Chief MacIntyre reported he explained the order to Sheriff Arpaio in January 2012. Chief MacIntyre reported Sheriff Arpaio acknowledged what he said during the conversations in 2012 about the order.
- In his interview, Chief MacIntyre recalls a meeting involving Tom Liddy, Tim Casey, Joe Sousa and Brian Sands to brief all members of Enforcement on the order. Chief MacIntyre stated there may have been additional people at the meeting. He did not say when that meeting occurred.

4. Chief Sands

- In his interview, Chief Sands reported that “very soon” after the court order was issued, Tim Casey brought it to him. He read the order after Tim Casey gave it to him. Sands was listed as a recipient in Mr. Casey’s Dec. 23, 2011 email message regarding the court order (attachment #4).
- In his interview, Chief Sands reported that within a month of the order being issued, he spoke to Sheriff Arpaio and Chief Deputy Sheridan about the order. Sheriff Arpaio discussed the order and said the MCSO could still investigate human smuggling. He does not know if Sheriff Arpaio read the order or relied on an attorney’s interpretation.
- In his interview, Sands reported that Lt. Sousa told him that he (Lt. Sousa) had spoken with Tim Casey about the court order.
- In Chief Sands’ interview, Chief Sands reported that he told Sousa that Chief Deputy Sheridan wanted Tim Casey to brief HSU on the order. Sands reported Lt. Sousa told him he would set up the training. There is no evidence that training ever occurred.
- A printout of a string of email messages provided to me by MCSO attorney Ms. Iafate shows that Chief Sands was copied on an email message Sousa wrote, dated Jan. 11, 2012, directing Sgt. Palmer to write training scenarios regarding the court order, and Chief Sands was also copied on an email from Lt. Sousa to Tim Casey, dated Jan. 24, 2012, seeking advice on the training scenarios. There is no evidence that training ever occurred. (See attachments #1 and #2.)

5. Chief Trombi:

- In his interview, Chief Trombi reported he didn’t hear much about Dec. 23, 2011 court order until late 2013 or early 2014, when the federal monitor team was assembled.
- In his interview, Chief Trombi reported he “vaguely remembers” some training scenarios about the order. It should be noted that he was copied on Lt. Sousa’s email message requesting Sgt. Palmer draft some training scenarios involving the court order (attachments #1 and #2).
- In his interview, Chief Trombi reported that he was “negligent” in not knowing about the order, considering his boss and the deputies under his supervision knew about the order.
- In his interview, Chief Trombi reported that he does not remember any conversations he participated in about the order prior to the monitor team being assembled.

- In his interview, Chief Trombi reported he was "sorry" he did not inquire further into the order.
- Regarding his not knowing about the order, Chief Trombi reported in his interview that he was "potentially remiss," and he should not wait for someone to "spoon feed" the information to him.
- In his interview, Chief Trombi reported that he could not explain how people above and below him were aware of the order and he was not.

6. Lt. Jakowinicz:

- Lt. Jakowinicz said in his interview with me that he did not learn about the Dec. 23, 2011 court order until May of 2013 when the May 2013 court order was issued.
- Lt. Jakowinicz told Sgt. Fax in his interview that upon his initial transfer to HSU in April 2012, he with Chief Trombi, who told him HSU was a "well-oiled machine" and added, "There's nothing to change. Just figure out what they're doing and have some fun."
- The document dated "Defendants' Privilege Log" states that Jakowinicz was a recipient of an email from Lt. Joe Sousa dated Jan. 24, 2012, described as "Email seeking advice re training scenarios based on Judge's Order."
- The printed email string provided by MSCO attorney Michele lafrate states that Jackowinicz was copied on a Jan. 24, 2012 email message from Lt. Sousa.
- Lt. Sousa stated in his interview that he copied Jakowinicz on email about the training scenarios when Jakowinicz replaced him in April of 2012.
- Jackowinicz stated in his interview with Sgt. Fax that Lt. Sousa never advised him about any court orders.

7. Lt. Sousa:

- In his November 13, 2014 interview with Sgt. Fax, Lt. Sousa acknowledged he was aware of the order that was issued in 2011.
- In that interview with Sgt. Fax, Lt. Sousa admitted he had read the order.
- In his interview with me, Lt. Sousa reported that he learned about the order very soon after it was issued.
- In his interview with me, Lt. Sousa reported he spoke with Chief Sands and Tim Casey about the order shortly after it was issued.
- In his interview with me, Lt. Sousa reported he believes he received the order from Tim Casey along with a written explanation of the order, shortly after the order was issued.

- In his interview with me, Lt. Sousa reported he spoke with Sgt. Palmer about the order and asked him to write up some scenarios that could be used to train deputies on the order.
- A printout of a string of email messages provided to me by MCSO shows that Sousa wrote a message dated Jan. 11, 2012, directing Sgt. Palmer to write training scenarios regarding the court order; Sgt. Palmer sent the scenarios to Lt. Sousa on Jan. 19, 2012; Lt. Sousa forwarded the scenarios to MCSO attorney Tim Casey and copied that message to Chief Sands, Chief Trombi, Rollie Seebert, Lt. Jakowinicz and Chief MacIntyre. Lt. Sousa reported during his interview with me that he was asking for approval of those scenarios, and never heard back.
- The document titled, "Defendant's Privilege Log" lists another email message from Lt. Sousa to Mr. Casey dated Feb. 27, 2012, "regarding advice on training scenarios." The same log states that Mr. Casey wrote an email message to Lt. Sousa dated Feb. 28, 2012, "regarding status of training scenario review."
- In his interview with me, Lt. Sousa said he believes he spoke with the Sheriff about the court order and he has "no doubt" the Sheriff knew about the order. He recalls a two minute conversation he had sometime in 2012 with the sheriff about the order. He recalls the year because the conversation occurred during a briefing on a case they did in 2012.

8. Sgt. Trowbridge:

- In his September 15, 2014 interview with Sgt. Fax, Sgt. Trowbridge initially reported he received the court order by email from Lt. Sousa. He later stated that he could not remember anyone giving him the order. He believes he read the order when it was published in the New Times shortly after it was issued. Later in the interview he reaffirmed he did not receive the court order from anyone in his chain of command.
- In his interview with me, Sgt. Trowbridge stated he witnessed Sgt. Palmer's phone call with Sheriff Arpaio regarding the release of detainees, during which Sgt. Palmer tells the sheriff that the court order didn't permit MCSO to delay the transfer of the detainees.
- In his interview with me, Sgt. Trowbridge said he attended at least one meeting with "staff" and MCSO attorneys in which the order was discussed.
- In his second interview with me, Sgt. Trowbridge said nothing at all changed about the way they conducted business after the Dec. 23, 2011 court order was issued.

- In his interview with me, Sgt. Trowbridge said supervisors should have known how business was being done because it was documented in the shift summaries.

9. Sgt. Brett Palmer:

- In his interview, when he joined HSU, immediately after the December 2011 order was issued, Lt. Sousa told him the unit was only to detain people for state law violations, not federal law violations.
- In his interview, Sgt. Palmer reported he "maybe" received a PDF of the court order, which he said he read.
- In his interview, Sgt. Palmer stated that Lt. Sousa directed the unit to continue to use indicators from the "LEAR protocol" to identify vehicles to stop.
- In his interview, Sgt. Palmer knew about the Dec. 23, 2011 court order at the time of his phone call with Sheriff Arpaio regarding the release of detainees, about a month after the court order was issued.
- A printout of a string of email messages provided to me by MCSO shows that Sousa wrote a message dated Jan. 11, 2012, directing Sgt. Palmer to write training scenarios regarding the court order; Sgt. Palmer sent the scenarios to Lt. Sousa on Jan. 19, 2012.

c. Determine how the court order was disseminated to the commanders, supervisors and line level deputy sheriff.

1. The Dec. 23, 2011 court order was disseminated to Brian Sands, John MacIntyre, Jerry Sheridan and Joseph Sousa in an email from Attorney Tim Casey on Friday, December 23, 2011 at 5:22pm.
2. Phone calls between MCSO attorney Tim Casey and Chief Sands and Lt. Sousa.
3. During Sgt. Trowbridge's interview with Sgt. Fax, he initially stated he received the court order in an email from Lt. Sousa. He later stated that he first read the order when he located it online in a New Times story. It is unclear whether he was officially informed.
4. Lt. Sousa said the Dec. 23, 2011 court order was never disseminated department-wide, although it should have been.
5. There was never a formal training module presented to all the members of MCSO regarding the Dec. 23, 2011 court order until after the May of 2013 order. Lt. Sousa instructed Sgt. Palmer to draft scenarios that could be used in training regarding the Dec. 23, 2011 court order for HSU members. Sgt. Palmer

completed the scenarios and sent them back to Lt. Sousa, who sent email seeking advice from upper-level management regarding the scenarios. Recipients were MCSO attorney Tim Casey, Chief Brian Sands, Chief David Trombi, Rollie Seebert, Lt. Brian Jakowicz, and Chief John MacIntyre. It is unclear if there was any further action by to complete the development of the training module. (See attachments #1 and #2.) It should be noted Sgt. Palmer reported he trained his subordinates in HSU by conducting a briefing.

6. During Sheriff Arpaio's interview he stated;

(Page 36 of his interview transcript)

"I don't know. I don't know if that policy ever got down to the troops. I think we had a miscommunication problem over this 2011 order. I don't know about it, I didn't read it until later."

Sheriff Arpaio later said;

(Also on page 36 of the transcript)

"And there was a lot of miscommunication getting this order down to the field."

d. Determine why the Sheriff's Office believed they were not violating the 2011 court order by continuing to conduct these types of traffic stops.

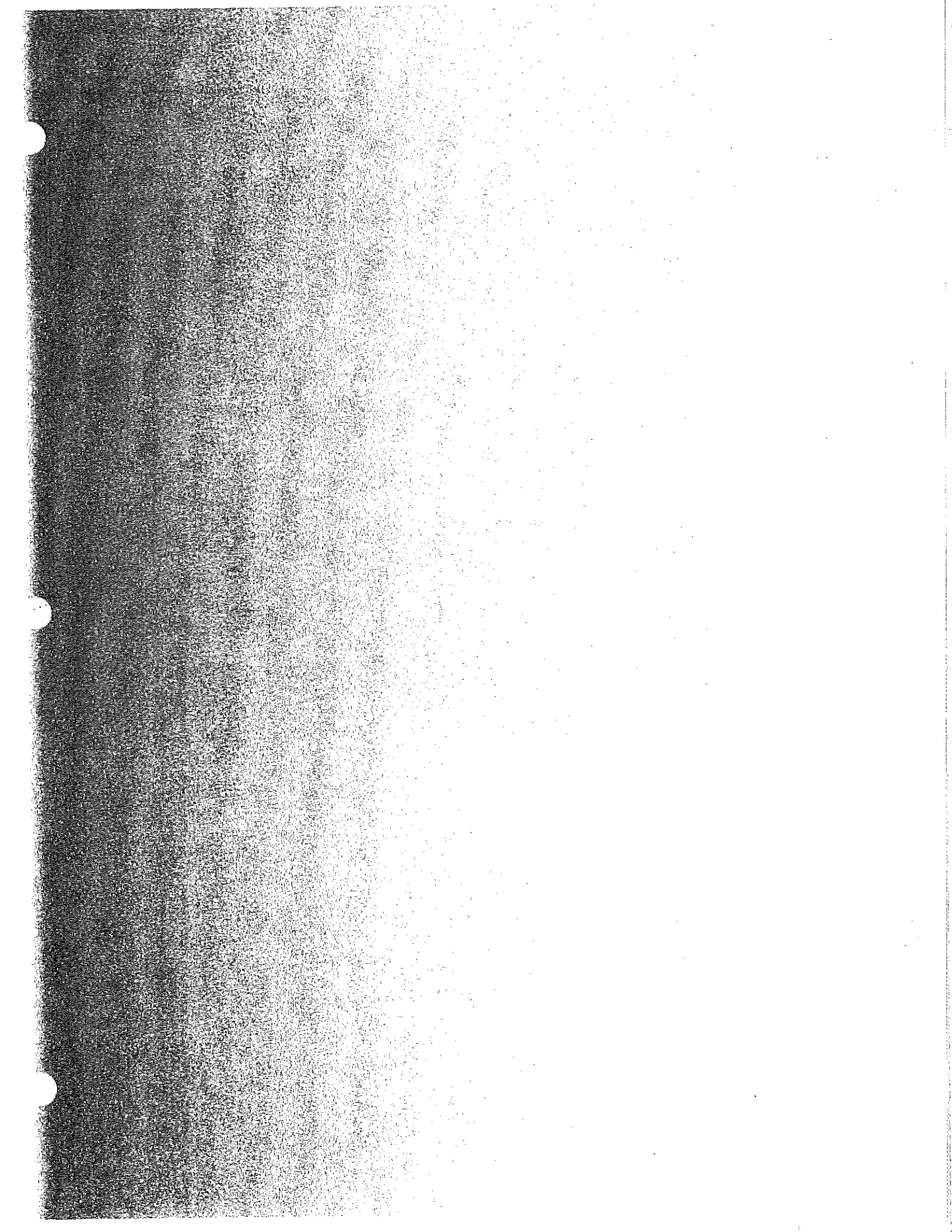
Members of MCSO may have believed they were in compliance with the order because executive staff didn't give it the necessary attention. This is based on the following:

1. There was never a formal distribution to all members of MCSO of the court order. I have been unable to locate any evidence supporting a formal distribution or posting of the order until after the judge issued the May 2013 order.
2. There was never a documented MCSO upper-level management interpretation of the Dec. 23, 2011 court order disseminated department-wide until after the judge issued the May 2013 order. It is imperative that an event of this magnitude be formally addressed by the organization, and the entire organization needs to move forward with the same information. Some members of MCSO obtained copies of the order through different channels and reviewed the order on their own. They believed that if their actions were contrary to the order their superiors would offer them direction to correct their actions to act within the boundaries of the order.

For example, in Sgt. Trowbridge's interview with Sgt. Fax on September 15, 2014, Sgt. Trowbridge stated that he "had read something in the SOP's that stated as long as the contact with ICE could be made during the time it would take to deal with the original issue they could contact ICE." Sgt. Trowbridge said he was not given direction to change

the way his unit was conducting stops until "a while" after the traffic stop involving 5 South Korean male subjects that occurred on November 1, 2012. Sgt. Trowbridge attended meetings with Sheriff Arpaio, Chief Deputy Sheridan, Tim Casey and other unknown attorneys, Lisa Allen and occasionally Chief Brian Sands. Sgt. Trowbridge said his chain of command was very aware of how HSU was doing things and he was never told to change the way HSU was operating during the period of time following the Dec. 23, 2011 court order.

3. There was never a formal training module presented to all the members of MCSO regarding the Dec. 23, 2011 court order until after the May 2013 court order. Lt. Sousa instructed Sgt. Palmer to draft scenarios that could be used in training for HSU members. Sgt. Palmer completed the scenarios and sent them back to Lt. Sousa, who sought advice from upper-level management regarding the scenarios. It is unclear if there was any further action by to complete the development of the training module. (See attachments #1 and #2.) It should be noted Sgt. Palmer reported he trained his subordinates in HSU by conducting a briefing.



IA 14-0543

Supplemental Report

Completed by Don Vogel

April 7, 2015

IA 14-0543

Supplemental Report

April 7, 2015

Findings of Evidence

Ms. Iafrate's February 4, 2015 email offering direction as to the content of the final report called for me to make "findings of evidence." Upon reviewing the final report, I determined that the tasks presented in the letter of engagement did not allow me to complete that request. The findings of evidence requested by Ms. Iafrate are documented in this supplemental report.

Sgt. Trowbridge

The information gathered in the interviews and the investigation support the fact that Sgt. Trowbridge had the order and reviewed it, attended meetings where the order was discussed and that his chain of command knew how HSU was functioning under his immediate supervision. Sgt. Trowbridge relied on his chain of command to ensure the actions of HSU were in compliance with the Dec 23, 2011: court order. Sgt. Trowbridge was never offered any training or an interpretation of the order by any level of his chain of command. Sgt. Trowbridge did not have the information necessary to properly complete his duties as a supervisor.

Lt. Sousa

The information gathered in the interviews and the investigation support the fact that Lt. Sousa clearly knew the order existed very soon after it was issued. Although Lt. Sousa had conversations with executive staff members about the order and attended meetings where the order was discussed, he failed to ensure that he had a proper and full understanding of the order. He requested that Sgt. Palmer complete written information that would be used to train other deputies. Palmer completed that task and sent the information to Lt. Sousa, but that training project was never completed. The evidence supports that Lt. Sousa sought guidance about the training project from MCSO attorneys and the chain of command. It is unclear why that project was never completed, because emails I received documenting that matter were heavily redacted. The evidence does show that Lt. Sousa failed to disseminate the order to members under his supervision. Lt. Sousa failed to provide sergeants and deputies under his command the information necessary to properly complete their duties.

Lt. Jakowinicz

The information gathered in the interviews and the investigation support the fact that Lt. Jakowinicz was copied on the Jan 24, 2012 email discussing the training scenarios that were being developed as a result of the Dec 23, 2011 court order. The information from that Jan 24, 2012 email has been redacted from the copy that was provided to me, so I have no evidence of what information was offered to him in that email. There is no evidence to support a claim that he was contacted or consulted in any other way about the development of the training. There is no evidence to support any claims that he was provided with any other information from Lt. Sousa or any other member of his chain of command about the order upon his transfer into the unit. Lt. Jakowinicz's immediate supervisor, Chief Trombi, never told him about the court order.

Chief Trombi

The information gathered in the interviews and the investigation support the fact Chief Trombi was not aware of the Dec. 23, 2011 court order, and he admitted that he should have been aware of it. Chief Trombi failed to have the appropriate oversight of information affecting the units under his command. In his interview, Chief Trombi said he was "negligent," "remiss," and "sorry" for not being aware of the court order. Chief Trombi failed the deputies that served under his command by not fulfilling his duties, thus allowing them to continue with behavior that was not compliant with the Dec 23, 2011 court order. Chief Trombi's failed to be informed of all major issues affecting his units and to communicate with his immediate supervisor about those issues. As a result of the failure to have appropriate oversight of the information, Chief Trombi was not able to keep Chief Deputy Sheridan informed.

Chief MacIntyre

The information gathered in the interviews and the investigation support the fact that Chief MacIntyre received, reviewed and understood the order. He also attended at least one meeting with Chief Sands, Lt. Sousa and attorneys where the order was reported to have been discussed. Chief MacIntyre reported he had conversations with, and explained the Dec 23, 2011 court order to, Sheriff Arpaio and Chief Deputy Sheridan. Chief MacIntyre never followed up to ensure the order was being properly administered by the organization; Chief MacIntyre said that was not in his area of responsibility.

Chief Deputy Sheridan

The information gathered in the interviews and the investigation supports the fact Chief Deputy Sheridan failed to have the appropriate oversight and control of information affecting units under his command. The Dec 23, 2011 court order was emailed to him on the date it was issued, and Chief MacIntyre reported he discussed the order with Chief Deputy Sheridan. Because of this deficiency Chief Deputy Sheridan failed to keep Sheriff Arpaio informed of all major issues within the organization. As a result of the failure to have appropriate oversight of the information, Chief Sheridan was not able to ensure the proper dissemination and interpretation of the Dec 23, 2011 court order, nor did he ensure the proper development of training regarding the order.

Sheriff Arpaio

The information gathered in the interviews and the investigation supports the fact that Sheriff Arpaio failed in his responsibility to have proper oversight and control over important information affecting the practices of the Maricopa County Sheriff's Office. It is clear that he did not maintain oversight and control over the information in the December 23, 2011 court order in the Melendres case.

-end-