

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Manuel de Jesus Ortega Melendres, on  
behalf of himself and all others similarly  
situated; et al.

Plaintiffs,

and

United States of America,

Plaintiff-Intervenor,

v.

Joseph M. Arpaio, in his official capacity as  
Sheriff of Maricopa County, Arizona; et al.

Defendants.

No. CV-07-2513-PHX-GMS

**ORDER**

Pending before the Court is the Motion for Extension of Time to Retain Counsel by Michael Zullo. (Doc. 1501.) For the reasons stated below that Motion for Extension is denied; nevertheless, the Court treats the Motion for Extension as a Request for a Protective Order by Mr. Zullo, and directs the Parties to respond thereto.

This contempt matter has been in hearings now for over seven months. The hearing began in April, and was continued, both to allow the Court to rule on Defendants' motion to disqualify, and then to allow the parties sufficient time for Defendants to provide the documents that were previously requested, and to allow sufficient time for the hearings to be resumed consistent with the many persons appearing as parties and specially-appearing non-parties. The hearing resumed on September 24 and continued on

1 September 25, 29, and 30. It then continued on October 1 and 2, 8 and 9, 13 and 14, and  
2 27 and 28.

3 Obtaining Mr. Zullo's documents, his deposition, and his hearing testimony has  
4 been an ongoing topic since before the resumption of the hearings. In September,  
5 Plaintiffs sought Mr. Zullo's individual documents when they did not receive them from  
6 MCSO's document productions. Defense counsel indicated on September 22 that such  
7 materials should be sought through a third-party subpoena to Mr. Zullo. (Doc. 1415 at  
8 3.) Such a subpoena was issued and served on Mr. Zullo on September 25. (Doc. 1396.)  
9 Defendants filed a Motion to Quash the subpoena on September 29. (Doc. 1411.) The  
10 Court discussed the Motion to Quash with the parties that same evening after the hearing  
11 was concluded. (Doc. 1417 at 1731-1732). Plaintiffs filed a Response to the Subpoena  
12 that same night, (Doc. 1415,) the parties argued the motion the next morning, (Doc.  
13 1422,) and the Court ruled on the Motion to Quash that same day, denying it in all  
14 pertinent respects as it had been narrowed by the Plaintiffs. (Doc. 1425.)

15 On October 6, the parties requested and received a continuance for compliance  
16 which was granted, and Mr. Zullo's deposition was scheduled for October 23, which fell  
17 between the dates set for hearing. (Doc. 1440.) Mr. Zullo provided the subpoenaed  
18 documents to Defense counsel; Defense counsel reviewed the documents for privileged  
19 communications and produced at least some documents to Plaintiffs. On October 20,  
20 Defense counsel filed notice with this Court that Mr. Zullo had instructed Defense  
21 counsel not to deliver some of the documents to Plaintiffs' counsel. Defense counsel  
22 further informed that Court on that date that Mr. Zullo had decided to seek counsel.  
23 (Doc. 1478). Although Mr. Zullo appeared for his deposition on October 23, he  
24 apparently declined to answer questions without the assistance of counsel. This Court  
25 thus entered an order on October 26 granting Mr. Zullo until today to file a protective  
26 order. That provided Mr. Zullo with at least ten days from the date he first desired to  
27 seek counsel, to obtain counsel and assert protection from the order if he wished to do so.  
28 On October 28, Mr. Zullo filed a motion for extension with this court in which Mr. Zullo

1 seeks a halt of thirty days in these proceedings so that he can attempt to get Maricopa  
2 County to pay for him to secure separate counsel. The Court denies the motion. These  
3 hearings, as Mr. Zullo is well aware, have been resumed for over a month and a half. Mr.  
4 Zullo determined he wished to obtain separate counsel no later than October 20. In light  
5 of the ongoing hearing, the Court gave him ten days in which to do so. The Court  
6 declines to extend the hearing by thirty additional days so that Mr. Zullo can attempt to  
7 negotiate with Maricopa County to pay for a separate attorney.

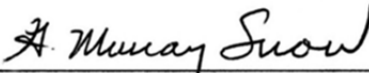
8 Nevertheless, in his motion to continue, Mr. Zullo cites to *United States v.*  
9 *Hubbell*, 530 U.S. 27 (2000), to assert that his Fifth Amendment rights might be infringed  
10 by the compelled production of the documents at issue. It seems to the Court that in light  
11 of the criminal issues that have been raised, Mr. Zullo may raise a credible case that the  
12 production of documents in his possession might implicate his Fifth Amendment  
13 protection against being “compelled in any criminal case to be a witness against himself.”  
14 U.S. Const. amend. V. The Court has been informed that the United States is disinclined  
15 to request the Court to grant use immunity. Therefore, the Court directs the parties to  
16 treat Mr. Zullo’s request for an extension, and the legal authorities it contains, as a  
17 Motion for a Protective Order. It directs that any Response to the Motion be filed by  
18 November 2.

19 **IT IS THEREFORE ORDERED** that the Motion for Extension of Time to  
20 Retain Counsel by Michael Zullo is treated as a Motion for a Protective Order.

21 **IT IS FURTHER ORDERED** that parties may respond to the question of  
22 whether the Fifth Amendment privilege against testimonial incrimination extends to the  
23 documents at issue by November 2.

24 **IT IS FURTHER ORDERED** that a copy of this order be mailed to Mr. Zullo at  
25 the address which he has provided the Court.

26 Dated this 30th day of October, 2015.

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G. Murray Snow  
United States District Judge