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VIRLYNN TINNELL
SUPERIOR COURT CLERK

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
8 **IN AND FOR THE COUNTY OF MOHAVE**

9 **STATE OF ARIZONA,**

10 **Plaintiff,**

11 **vs.**

12 **JUSTIN JAMES RECTOR,**

13 **Defendant.**

No. CR-2014-01193

**MOHAVE COUNTY SHERIFF'S
OFFICE'S RESPONSE TO:
Defendant's Notice of Invocation of
Constitutional Rights/Right to
Remain Silent/Right to
Representation by Counsel**

14
15 COMES NOW the Mohave County Attorney, by and through Deputy County
16 Attorney James M. Schoppmann, *Special Counsel* to Mohave County Sheriff Jim
17 McCabe, and hereby offers the following response to Defendant's Notice of Invocation
18 of Constitutional Rights/Right to Remain Silent/ Right to Representation by Counsel.

19 The Sheriff takes no positions as to how the Court's ruling may or may not affect
20 the Defendant's criminal case. However, the Sheriff does oppose any ruling that
21 attempts to alter the normal operations of the jail, the Sheriff's duty to manage the jail,
22 and any ruling that has the potential to subject the Sheriff/Jail to unnecessary civil
23 liability by altering law based policies and procedures regarding inmates rights including
24 First Amendment rights.

25 The Arizona Court of Appeals, citing the landmark *Turner v. Safley*, Supreme
Court case, held that imprisonment does not automatically deprive a prisoner of his or



1 her constitutional rights or claims. *Doe v. Arpaio*, 214 Ariz. 237, 240, 150 P.3d 1258,
2 1261 (Ct. App. 2007)(citing *Turner v. Safley*, 482 U.S. 78, 84, 107 S.Ct. 2254 (1987)).
3 Inmates do not lose all their rights upon incarceration and the Sheriff/Jail is cognizant
4 and vigilant in ensuring all inmates are afforded their constitutional rights to
5 communicate with others including their right to access persons vial mail and telephone
6 as well as their right to have visitation.

7 The Sheriff agrees with the arguments made in the State's Response regarding
8 how unworkable and unwarranted an order would be if it precluded detention staff from
9 interacting with Defendant, especially concerning issues arising from and/or infractions
10 committed within the jail. The Defendant's motion is so broad it would also seem to
11 impede even an inmate grievance filed by the Defendant and the resulting and normal
12 communications that occur between a detention officer/staff and an inmate, by requiring
13 unfounded and unnecessary prophylactic measures. The Ninth Circuit, in *Rhodes v.*
14 *Robinson*, 408 F.3d 559, 567 (9th Cir. 2005), held that, "of fundamental import to
15 prisoners are their First Amendment "right[s] to file prison grievances," (citing *Bruce v.*
16 *Ylst*, 351 F.3d 1283, 1288 (9th Cir.2003)).

17 Defense counsel may wish he could save his client from himself in regards to
18 Defendant's requests for contacts with various individuals and communications from the
19 jail.¹ However, the Defendant has First Amendment and other rights that are separate
20 and apart from the arguments regarding the criminal aspect of this issue. The Sheriff
21 has an obligation to honor those rights and even faces potential civil liability for failing to
22 do so.

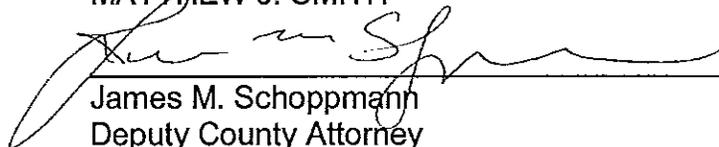
23 "Courts have limited authority to interfere with a sheriff's duties to maintain and
24 operate the count jails pursuant to the Arizona Constitution and A.R.S. §11-441(5) and

25 _____
26 ¹ The MCSO does not release recordings of inmate visitations or phone calls to any person, including law
enforcement officials, without a subpoena or court order. Recent news events regarding this case
involved the release of jail calls. However, that release was not made by the MCSO.

1 31-101, and then only to determine whether specific constitutional violations exist and in
2 doing so, to order narrow remedies to correct these violations." *Arpaio v. Baca*, 217.
3 Ariz. 570, 579 (App. 2008) (citing *Judd v. Bollman*, 166 Ariz. 417, 418, 803 P. 2d 138,
4 140 (App. 1991). The Sheriff requests the Court consider the civil rights / liability aspect
5 of the Defendant's requests as it affects the operations of the Sheriff/Jail. Furthermore,
6 the Sheriff questions the fact that the Defendant's motion is void of any basis for such
7 unprecedented measures.

8 RESPECTFULLY SUBMITTED THIS 13th DAY OF MARCH, 2015.

9
10 MOHAVE COUNTY ATTORNEY
MATTHEW J. SMITH

11 
12 James M. Schoppmann
Deputy County Attorney
Special Counsel to Sheriff

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14 A copy of the foregoing sent this same day to:

15 Honorable Lee F. Jantzen

16 Greg McPhillips, Mohave County Attorney's Office

17 Ron Gilleo, Mohave County Legal Defender's Office

18 Gerald T. Gavin

19 By JMS