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 9 IN THE UNITED STATES DISTRICT COURT  
 10 FOR THE DISTRICT OF ARIZONA

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

13 Plaintiffs,

14 vs.

15 Joseph M. Arpaio, in his individual and  
 16 official capacity as Sheriff of Maricopa  
 County, AZ, et al.,

17 Defendants.  
 18

No. CV-07-02513-PHX-GMS

UNITED STATES’ NOTICE REGARDING  
 PARTICIPATION IN SETTLEMENT  
 19 NEGOTIATIONS

20 The United States of America, by and through its undersigned attorneys, hereby  
 submits this Notice at the direction of the Court.

21 At the status conference held on February 26, 2015, the parties to the underlying  
 22 civil action indicated their interest in settlement negotiations to resolve all potential  
 23 liability for civil and criminal contempt. The Court noted that if criminal contempt  
 24 proceedings were initiated in this case, it would request appointment of the United States  
 25 Attorney’s Office (USAO) to prosecute those charges. Consequently, the Court noted  
 26 that any global settlement of both civil and possible criminal contempt charges would  
 27 necessitate the USAO’s involvement. The Court then inquired whether the USAO was  
 28 amenable to participation in a settlement conference before a U.S. Magistrate Judge. The

1 USAO declined participation; our Office does not engage in criminal settlement  
2 negotiations overseen by magistrate judges because court facilitated settlement  
3 conferences in criminal matters violate the proscription in Rule 11(c)(1) of the Federal  
4 Rules of Criminal Procedure against plea discussion participation by “[t]he court,”  
5 whether they are facilitated by the District Court or by a magistrate judge. *See, e.g.,*  
6 *United States v. Davila*, 133 S. Ct. 2139 (2013) (finding that actions of a magistrate judge  
7 who encouraged a plea agreement violated Rule 11(c), even though the magistrate judge  
8 had no further role in the case).

9 The Court then inquired whether the USAO would participate in settlement  
10 negotiations with a private mediator and requested that the Office file this Notice  
11 articulating its position on this matter. Tr. 2/26/15 at 36-37.

12 The USAO respectfully declines this invitation. While the Supreme Court’s  
13 guidance in *Davila* is not directly applicable in the case of a private mediator, the USAO  
14 has other concerns. First, we believe our participation would be premature at this  
15 juncture because the Court has not made a formal referral to the USAO under  
16 Rule 42(a)(2). Nor, as this Court has repeatedly noted, is it clear that such a referral will  
17 ever be made. Second, while global settlement of civil and criminal matters may be  
18 permissible in some instances, those instances involve situations in which the  
19 Government is a party in the civil matter. This is not the case here. Even when the  
20 Government is a party to a civil matter, moreover, it is worth noting that global  
21 settlements can raise significant ethical issues because the Government can neither be,  
22 nor seem to be, trading money for relief or insulation from criminal prosecution. In this  
23 instance, the Government is not a party to the civil matter and the USAO is not in a  
24 position to negotiate a settlement in a criminal case that it has not initiated or  
25 independently investigated.

26 In reaching this position, the USAO consulted with the Executive Office for  
27 United States Attorney’s Offices, which agrees with our decision to respectfully decline  
28 private mediation.

1 The USAO would also like to take this opportunity to notify the Court, the parties,  
2 and specially non-appearing parties that any matters or communications regarding  
3 potential criminal contempt will be handled by Assistant United States Attorneys  
4 Lynnette Kimmins and Rosaleen O’Gara.

5 Copies of all filings, henceforth, should be served on counsel as indicated below:

6  
7 Lynnette Kimmins  
8 Rosaleen O’Gara  
9 Assistant U.S. Attorneys  
10 United States Attorney’s Office  
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18 Respectfully submitted this 10th day of March, 2015.

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ELIZABETH A. STRANGE  
Attorney for the United States  
Acting Under Authority Conferred by  
28 U.S.C. § 515  
District of Arizona

*s/Lynnette Kimmins*  
*s/Rosaleen O’Gara*

LYNNETTE KIMMINS  
ROSALEEN O’GARA  
Assistant U.S. Attorneys

Copy of the foregoing served electronically or by  
other means this 10th day of March, 2015, to:

All ECF participants.