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**admitted pro hac vice, renewal of fees in progress*

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Attorneys for Plaintiffs

SUPERIOR COURT OF ARIZONA
COUNTY OF MARICOPA

JANE DOE, individually and on behalf of all)
others similarly situated,)

Plaintiffs,)

vs.)

JOE ARPAIO, MARICOPA COUNTY)
SHERIFF, in his official capacity;)
MARICOPA COUNTY,)

Defendants.)

No. CV2004-009286

**PLAINTIFFS' MOTION FOR
CONTEMPT AND/OR FOR A
MODIFICATION OF THE
INJUNCTION**

(Assigned to Hon. Edward Burke)

Oral Argument Requested

Plaintiffs respectfully move this Court, pursuant to Rule 65(j) of the Arizona Rules of Civil Procedure and this Court's inherent powers, to hold Defendants in contempt for disobeying the injunction that this Court entered on October 27, 2005. (R. 52.) At minimum, Plaintiffs respectfully ask this Court to modify that injunction to provide additional safeguards for inmates seeking abortion care. The injunction at issue prohibits Defendants from requiring inmates to obtain a court order before Defendants would transport them to obtain an abortion. This Court specifically noted in the injunction order

1 that it “retain[ed] jurisdiction of this action for the purpose of implementing and enforcing
2 this final judgment.” *Id.*

3 In May 2008, in direct violation of that injunction, Defendants refused to transport
4 an inmate, Mary Roe,¹ for an abortion unless she obtained a court order. Eventually, after
5 Plaintiffs’ counsel became involved, Defendants agreed to transport Ms. Roe, and she was
6 able to obtain an abortion. As a result of Defendants’ actions, Ms. Roe’s abortion was
7 delayed by four weeks, and the abortion procedure took two days rather than one. The
8 injunction in this case was specifically issued to remedy the risk of harm, and the risk of
9 being forced to carry to term, that Ms. Roe faced. As Defendants have demonstrated by
10 their words and actions, future inmates remain subject to the same risks Ms. Roe faced
11 unless this Court intervenes. Plaintiffs respectfully ask this Court to hold Defendants in
12 contempt, ensure that Defendants comply with the injunction, and prevent Defendants
13 from denying and delaying future inmates’ abortion requests.

14 This motion is supported by the following Memorandum of Points and Authorities,
15 and the attached declaration of Plaintiffs’ counsel, Brigitte Amiri. Should this Court
16 require additional evidence, Plaintiffs respectfully request that this Court allow Plaintiffs
17 to conduct discovery. For example, Plaintiffs would ask this Court to issue a subpoena to
18 allow Plaintiffs to take the deposition of Ms. Roe’s criminal defense attorney, and
19 Plaintiffs would notice the deposition of one of more of Defendants’ employees.

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I. BACKGROUND**

22 This Court issued the injunction in question in October 2005, in an action brought
23 by Jane Doe after Defendants refused to transport her from a Maricopa County jail for an
24 abortion without a court order. The facts related to Ms. Doe’s situation are fully discussed

25 _____
26 ¹ Pursuant to this Court’s order, dated May 12, 2004, granting Plaintiffs’ Motion to Proceed Under Pseudonyms, the inmate will be referred to as Mary Roe.

1 in the Arizona Court of Appeals' decision affirming the injunction. *Doe v. Arpaio*, 214
2 Ariz. 237, 150 P.3d 1258 (App. Div. 1 2007). To summarize, Ms. Doe discovered she was
3 pregnant the day before the County took her into custody to serve a sentence for driving
4 under the influence. She immediately and repeatedly informed jail and medical personnel
5 that she wanted an abortion. Defendants told Ms. Doe that pursuant to the longstanding
6 policy of the Maricopa County Sheriff's Office ("MCSO") they would not transport her
7 for an abortion unless she obtained a court order directing them to do so. Though Ms. Doe
8 attempted to comply with this demand, her request for a court order was denied. She then
9 brought the instant action asking for immediate transport and challenging the MCSO
10 policy as unconstitutional. This Court granted an immediate injunction ordering
11 Defendants to transport Ms. Doe for an abortion. At that point, however, seven weeks had
12 passed since she first requested an abortion. It is well documented that each week of delay
13 increases the risks associated with the procedure, which include perforation of the uterus,
14 retained tissue, hemorrhaging, and even death.

15 After Ms. Doe obtained the abortion, this Court proceeded to consider the merits of
16 the case. This Court held the policy unconstitutional under the Fourteenth Amendment of
17 the U.S. Constitution, and issued an injunction specifically prohibiting Defendants from
18 requiring inmates to obtain a court order as a precondition to being transported from an
19 MCSO jail for an abortion in the future. This Court's decision was affirmed by the
20 Arizona Court of Appeals. *Doe v. Arpaio*, 214 Ariz. 237, 150 P.3d 1258 (App. Div. 1
21 2007). The Arizona Supreme Court denied review on September 25, 2007. The United
22 States Supreme Court denied certiorari earlier this year. *Arpaio v. Doe*, 128 S. Ct. 1704
23 (2008).

24 **II. STATEMENT OF FACTS**

25 On May 8, 2008, Plaintiffs' counsel received a phone call from a Maricopa County
26 public defender, Rebecca Kirchler, who was representing Ms. Roe in a criminal matter.

1 (Declaration of Brigitte Amiri at ¶ 3, hereinafter “Amiri Dec.”, attached as Exhibit 1.) Ms.
2 Roe was approximately 13-14 weeks pregnant, and had began asking jail and medical
3 employees on or about April 29, 2008, to be transported for an abortion. (*Id.* at ¶¶ 4, 6.)
4 In response, jail and medical employees told Ms. Roe that she needed to contact her
5 attorney to obtain a court order. (*Id.* at ¶ 6.)

6 Ms. Roe contacted her criminal defense attorney, Ms. Kirchler, who in turn called
7 various Maricopa County Sheriff’s Office (MCSO) and Correctional Health Services
8 (CHS) employees to determine how Ms. Roe could be transported for her requested
9 abortion. (*Id.* at ¶¶ 6-7.) Ms. Kirchler was told that Ms. Roe would have to obtain a court
10 order to be transported for abortion. (*Id.* at ¶¶ 8, 18.) Among the employees with whom
11 Ms. Kirchler spoke was John (Jack) MacIntyre. Mr. MacIntyre, an attorney, has been
12 employed by the County or the Sherriff in various roles for many years, and is currently
13 the Sheriff’s Deputy Chief and in charge of MCSO jails. (*Id.* at ¶ 9; R. 29, Ex. 10 at 11:2-
14 12:3.) He was one of the architects of the policy that is the subject of the case, and he was
15 deposed in this case. (Amiri Dec. at ¶ 9; R. 29, Ex. 10. at 15:5-18:17.). Mr. MacIntyre
16 told Ms. Kirchler that the quickest way for Ms. Roe to be transported would be for Ms.
17 Kirchler to obtain a court order placing Ms. Roe on work release (even though Ms. Roe
18 had been on work furlough, not work release). (Amiri Dec. at ¶ 10.) Mr. MacIntyre never
19 told Ms. Kirchler about the injunction in this case nor did he tell Ms. Kirchler that there
20 were other options available for transporting Ms. Roe. (*Id.*)

21 After a week of phone calls and emails to MCSO and CHS employees, Ms.
22 Kirchler researched the issue of transportation of inmates for abortion, and fortunately
23 found the Court of Appeals decision in this case. (*Id.* at ¶¶ 11, 18.) She then contacted
24 Plaintiffs’ counsel, and Plaintiffs’ counsel offered their assistance. (*Id.* at ¶ 11.)
25 Plaintiffs’ counsel contacted Defendants’ counsel and arranged for Ms. Roe to be
26 transported without the need for a court order. (*Id.* at ¶¶ 13-17.)

1 On May 15, 2008, Defendants transported Ms. Roe for the abortion, but at that
2 point her pregnancy had progressed, and she was beyond the gestational limit of that
3 clinic. (*Id.* at ¶ 19.) Ms. Kirchler subsequently arranged, in the context of the appeal of
4 the removal from work furlough, for Defendants to temporarily release Ms. Roe so she
5 could have the abortion. (*Id.* at ¶ 22.) Ms. Roe had the abortion on May 29-30, 2008. (*Id.*
6 at ¶ 23.)

7 Had defendants followed the letter and intent of this Court's injunction Ms. Roe
8 would not have been forced to wait four weeks to obtain an abortion. (*Id.*) This delay
9 resulted in a more complicated procedure that took an extra day to complete. The
10 procedure was also more emotionally traumatic for Ms. Roe given that her pregnancy had
11 progressed. (*Id.*) Each week of delay carries additional risks such as perforation of the
12 uterus, retained tissue, hemorrhaging, and even death. (R. 29 Ex. 6 at ¶ 11.) This Court
13 issued the injunction in this case specifically to prevent Defendants from doing exactly
14 what they did to Ms. Roe – they imposed an unnecessary and unjustified delay in allowing
15 her access to an abortion by requiring a court order, thereby exposing her to risks to her
16 health, and necessitated the instant motion.

17 **III. ARGUMENT**

18 Defendants violated the injunction that this Court entered on October 27, 2005. In
19 conjunction with the decision on the merits, this Court issued an injunction with the
20 following terms:

21 IT IS FURTHER ORDERED that Defendants Arpaio and Maricopa
22 County and their representatives, agents, employees, or those persons
23 acting in concert or participation with them, are permanently enjoined
24 from directly or indirectly enforcing the unwritten policy described
25 above or requiring a pregnant inmate in the Maricopa County jails to
26 obtain a court order before she will be granted transportation to obtain
an abortion.

1 (R. 52.) This Court also specifically “retain[ed] jurisdiction of this action for the purpose
2 of implementing and enforcing this final judgment,” *id.*, and the Court of Appeals
3 specifically noted that “[t]he superior court will plainly have the authority to enforce [the
4 injunction] if the County unreasonably, or without reasons, refuses a transportation
5 request.” 214 Ariz. at 246 n.11, 150 P.3d at 1267 n.11.

6 After the U.S. Supreme Court refused to review the case, Defendant Arpaio
7 publicly indicated that he disapproved of the injunction and may decide to ignore it in a
8 future case: “I still don’t agree that we should take females on a voluntary basis to an
9 abortion. I’m against that. But we took it to the highest court, and we’ll see what happens
10 if the situation comes before me again in the jail system.” Michael Kiefer, *The Arizona*
11 *Republic* (March 25, 2008) (quoting Sheriff Joe Arpaio).

12 Ms. Roe’s case confirms that Sheriff Arpaio does not intend to obey the injunction.
13 Ms. Roe’s abortion request – made approximately one month after Sheriff Arpaio’s public
14 disapproval of the injunction – was met with a demand for a court proceeding and order.
15 Specifically, Mr. MacIntyre told Ms. Kirchler that the quickest way for Ms. Roe to be
16 transported would be for Ms. Kirchler to obtain a court order. Mr. MacIntyre never told
17 Ms. Kirchler about the injunction in this case, nor did he tell Ms. Kirchler that there were
18 other options available for transporting Ms. Roe. Mr. MacIntyre’s representations and
19 omissions raise serious concerns. There can be no question that given the position he
20 holds and his direct involvement in this case, that Mr. MacIntyre knew the County’s
21 response to Ms. Roe’s request violated this Court’s injunction.

22 Ms. Roe’s situation illustrates that additional safeguards are needed to protect
23 inmates’ constitutional rights and ensure that Defendants comply with the injunction.
24 There is a need for quick consideration and implementation of an inmate’s abortion
25 request as the facts of Ms. Roe’s case demonstrates. As the Court of Appeals noted,
26 “involuntary delays in obtaining an abortion have constitutional significance because

1 “time is likely to be of the essence in an abortion decision.” *Doe*, 214 Ariz. at 240, 150
2 P.3d at 1261 (quoting *H.L. v. Matheson*, 450 U.S. 398 (1981)). Quick resolution is
3 important both because the right will evaporate altogether if it is delayed too long, and
4 because each week of delay increases the risks associated with the abortion procedure. (R.
5 29 Ex. 6 at ¶ 11.)

6 It is uncertain what would have happened to Ms. Roe’s request for an abortion if
7 Plaintiffs’ counsel had not intervened. It is possible that Ms. Roe would not have been
8 able to obtain a timely abortion if Ms. Kirchler had not researched the legal issue and
9 contacted Plaintiffs’ counsel. It is uncertain whether other inmates in need of abortion
10 care (unbeknownst to Plaintiffs’ counsel) were – like Ms. Roe – told that transport would
11 not occur absent a court order. Accordingly, Plaintiffs respectfully request that this Court
12 hold Defendants in contempt and order them to implement additional measures to ensure
13 compliance with the injunction and to protect future women inmates from ongoing
14 violation’s of the Court’s order.

15 **IV. REQUESTED RELIEF**

16 Plaintiffs respectfully request that this Court:

- 17 1) Hold Defendants in contempt of court and assess appropriate penalties for
18 this violation and designate appropriate penalties for future violations, should they occur;
- 19 2) Order Defendants to conspicuously and permanently post notices approved
20 by Plaintiff’s counsel, in English and in Spanish, in open and day room areas on all
21 relevant floors, about the right of women inmates to be transported for an abortion without
22 a court order, and to also distribute this information to female inmates, in their primary
23 language upon their admission to an MCSO jail. Plaintiffs’ counsel shall be allowed
24 unannounced admission on a regular basis to check the postings and distributions;
- 25 3) Order Defendants to institute, and submit to this Court and Plaintiffs’
26 counsel for review and input, within thirty days from the date of this Court’s order, a

1 formal process for handling inmate requests for abortions, including designating a specific
2 employee to facilitate the requests;

3 4) Order Defendants to inform all of Defendants' employees and contractors on
4 an annual basis – starting thirty days after this Court issues its Order – of the injunction
5 requiring Defendants to transport inmates for abortions without the need for a court order
6 and inform them of the formal process discussed above in paragraph three, and to include
7 this information, after input from Plaintiffs' counsel and approval by the Court, in a
8 permanent written directive to all staff;

9 5) Require all employees to sign a form stating that they have received and
10 understood the information in paragraphs three and four;

11 6) Submit quarterly reports to the Court under seal, and serve on opposing
12 counsel in redacted form, the number of women that have requested an abortion and the
13 outcome of their requests; and

14 7) Award attorneys' fees and costs.

15 RESPECTFULLY SUBMITTED this 6th of August, 2008.

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17 FOUNDATION

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LEWIS AND ROCA LLP

By 

Randy Papetti
Kristina N. Holmstrom
Cooperating Attorneys for
ACLU of Arizona

Attorneys for Plaintiffs

ORIGINAL Filed and a Copy
Hand-Delivered this 6th day of
August, 2008 to:

Judge Edward O. Burke
Maricopa County Superior Court
125 West Washington, Suite 101
Phoenix, AZ 85003

A COPY of the foregoing mailed
this 6th day of August, 2008, to:

Daryl Manhart
Melissa Iyer
Burch & Cracchiolo, P.A.
P.O. Box 16882
Phoenix, AZ 85011-6882
Attorneys for Defendants

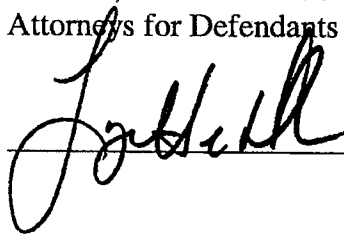


EXHIBIT “1”

DECLARATION OF BRIGITTE AMIRI

I, Brigitte Amiri, declare under penalty of perjury under the laws of the United States:

1. I submit this declaration in support of Plaintiffs' Motion for Contempt and/or for a Modification of the Injunction.
2. I am one of Plaintiffs' attorneys in this action, which resulted in a permanent injunction against Defendants that prohibited them from requiring inmates to obtain a court order as a prerequisite to being transported to obtain an abortion.
3. On May 8, 2008, I was contacted by an attorney, Rebecca Kirchler, who represented an inmate in Estrella Jail.
4. I understood from Ms. Kirchler, a public defender in Maricopa County, that Mary Roe¹ was approximately 13-14 weeks pregnant and wanted to have an abortion.
5. I told Ms. Kirchler about the injunction in this case – before she contacted me she was unaware that there was an injunction in place. I asked her about the specific circumstances involving her client, and offered to provide any assistance.
6. In the course of assisting Ms. Kirchler with Ms. Roe's request for an abortion, Ms. Kirchler told me that on or about April 29, 2008, Ms. Roe had asked

¹ Pursuant to this Court's order, dated May 12, 2004, granting Plaintiffs' Motion to Proceed Under Pseudonyms, the inmate will be referred to as Mary Roe.

jail and medical employees to be transported for an abortion. In response, jail and medical employees told Ms. Roe that she needed to contact her attorney to obtain a court order. Ms. Roe then contacted Ms. Kirchler.

7. I learned from Ms. Kirchler that after she received the phone call from her client, Ms. Kirchler began contacting various people in the Maricopa County Sheriff's Office (MCSO) and the entity that MCSO contracts with to provide medical care to inmates, Correctional Health Services (CHS).

8. During the course of those calls, I understood that various MCSO and CHS officials told Ms. Kirchler that she needed to obtain a court order in order to have her client transported for an abortion.

9. John (Jack) MacIntyre was one of the officials with whom Ms. Kirchler spoke. Mr. MacIntyre, an attorney, has been employed by the County or the Sheriff in various roles for many years, and is currently the Sheriff's Deputy Chief and in charge of MCSO jails. He was one of the architects of the policy that is the subject of this case, and he was deposed in this case.

10. Mr. MacIntyre told Ms. Kirchler that the quickest way for Ms. Roe to be transported would be for Ms. Kirchler to obtain a court order placing Ms. Roe on work release (even though Ms. Roe had previously been on work furlough). Mr. MacIntyre never told Ms. Kirchler about the injunction in this case, nor did he tell Ms. Kirchler that there were other options for transporting Ms. Roe.

11. Ms. Kirchler tried for approximately one week to arrange transportation for the procedure before she contacted me. She began researching the issue of transportation of inmates for abortion, and found the Court of Appeals decision in this case. She found Plaintiffs' counsels' names on the decision, and that is how she eventually came to contact me.

12. The same day I received Ms. Kirchler's initial call, May 8, 2008, I immediately sent her a copy of the injunction in this case.

13. Also on May 8, 2008, I immediately contacted Daryl Manhart, counsel for Defendants, and explained the situation to him. I told him his clients were in violation of the injunction.

14. The following day, May 9, 2008, I received an email from Mr. Manhart stating that Clarisse McCormick or Anne Longo at the Maricopa County Attorney's Office would contact Ms. Kirchler and me.

15. Later that day, I received a call from Ms. McCormick. She told me that there had been some "confusion" and that they would transport Ms. Roe without a court order.

16. Ms. McCormick claimed that the various County officials who had instructed Ms. Kirchler that Ms. Roe needed a court order to be placed on work furlough had done so based on what would be "more comfortable" for Ms. Roe.

17. I then called Ms. Kirchler to tell her that the County would transport her client, and that she should be in touch with Ms. McCormick to coordinate the logistics of the transport.

18. Ms. Kirchler copied me on an email she sent Ms. McCormick in which she stated that: "As you have certainly been informed, I have been trying to arrange this all week and was informed several times from the MCSO that it would require a court order for transportation or on [sic] order from the court placing my client back on work furlough." (Kirchler email to McCormick, May 9, 2008, attached as Ex. A.)

19. I understood from Ms. Kirchler that Ms. Roe was scheduled to be transported for her appointment on May 15, 2008.

20. I subsequently contacted Ms. Kirchler to ensure that Ms. Roe had been able to obtain the abortion she requested.

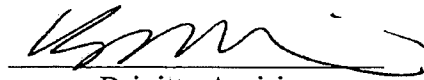
21. I spoke with Ms. Kirchler on June 11, 2008. Ms. Kirchler informed me that Ms. Roe had not been able to obtain the abortion on May 15, 2008, because she was over the gestational limit of the clinic where she had an appointment.

22. I understood from Ms. Kirchler that in the context of Ms. Roe's appeal of her work furlough request, Ms. Kirchler arranged for Ms. Roe to be temporarily released for the abortion procedure, and to return to the jail to finish her sentence.

23. I understood from Ms. Kirchler that Ms. Roe had the abortion on May 29-30, 2008. I also understood that because Ms. Roe was pushed further into her pregnancy, the abortion procedure took two days instead of one, and that is was more traumatic for Ms. Roe.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14th day of July, 2008.

A handwritten signature in black ink, appearing to read 'Brigitte Amiri', written over a horizontal line.

Brigitte Amiri

EXHIBIT A

Brigitte Amiri

From: Rebecca Kirchler - PDX [kirchlerr@mail.maricopa.gov]
Sent: Friday, May 09, 2008 3:19 PM
To: Clarisse McCormick
Cc: Brigitte Amiri
Subject:

Clarisse,

I received your voicemail and called you a bit ago but got your voicemail as well. I appreciate any assistance you can provide in helping to secure my client's transport for her requested medical procedure. As you have certainly been informed, I have been trying to arrange this all week and was informed several times from the MCSO that it would require a court order for transportation or on order from the court placing my client back on work furlough. Please let me know what information you need and I will be happy to assist.

I will be at a lunch meeting until approximately 1:30 p.m. I also have a videoconference set with from 2:00 – 2:30 at Estrella Jail. Otherwise, you can reach me in my office directly at x3-2804. I also have my Blackberry so I will have email access even during my meeting.

I look forward to working with you to resolve this situation for my client.

Thanks,

Becky

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