

MAGISTRATE JUDGE'S CIVIL MINUTES
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA –TUCSON
CIVIL MINUTES - GENERAL

Date: November 18, 2020

Civil Case Number: CV-14-02485-TUC-BGM

Title: Jacobson, *et al.* v. United States Dept. of Homeland Security, *et al.*

Present: Hon. Bruce G. Macdonald

Magistrate Courtroom Clerk: Beth Harper Court Reporter: Cheryl Cummings

Attorneys for Plaintiffs: Winslow Taub, Esq.; Mitra Ebadolahi, Esq.; Sarah Guerrero, Esq.;
Yvette Borja, Esq.; Christine Wee, Esq.; and Emily Child, Esq.

Attorneys for Defendants: James J. Gilligan, Esq.; Olivia H. Scott, Esq.; Hilarie E. Snyder, Esq.;
Christopher Edelman, Esq.; and Rodney Patton, Esq.

PROCEEDINGS: X Open Court Chambers Other

TELEPHONIC HEARING

A telephonic hearing regarding Plaintiffs' Motion for Sanctions (Doc. 171) was held before Magistrate Judge Macdonald. The Parties present argument. The Court takes the matter UNDER ADVISEMENT.

Later in Chambers.

Based upon the briefing, declarations, and other information submitted to the Court, IT IS HEREBY ORDERED that Plaintiffs' Motion for Sanctions (Doc. 171) is DENIED WITHOUT PREJUDICE.

The Court finds that Defendants could not have reasonably anticipated this litigation until the April 16, 2014 Letter to Manuel Padilla, Jr. and that any duty preserve did not arise prior to April 16, 2014. *See Surowiec v. Capital Title Agency, Inc.*, 790 F. Supp. 2d 997, 1006 (D. Ariz. 2011).

The Court further finds that Defendants have retained Border Patrol Agent in Charge Roger San Martin's e-mails and their attachments, reports (including Significant Incident Reports (SIRs), Immediate Incident Reports (IIRs), Operation Plans, and after action reports), and Policy Documents, although these items may or may not have been produced to Plaintiffs.

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Defendants admit, however, that Border Patrol Agent in Charge Roger San Martin's text messages have been destroyed, as well as photographs of the protests from Jon Joyner's cellular telephone. Defs.' Opp. to Pls.' Mot. for Sanctions (Doc. 179) at 12–13, 17, 21. Because Plaintiffs did not learn of these losses prior to the filing of their motion, the Court will not issue sanctions regarding these deletions at this time. See Pls.' Reply (Doc. 195) at 22.

The Court also declines to strike Border Patrol Agent in Charge Roger San Martin's Declaration. The Court finds that although Border Patrol Agent in Charge Roger San Martin may not have had personal knowledge of the statement in ¶ 10 beginning with, "In the past 5 years, there have been at least 28 significant safety incidents at the three checkpoints with Tucson Station[.]" Plaintiffs should have received the significant incident reports through discovery and will be able to test the accuracy of these statements accordingly. Additionally, the disclosure of Defendants' privilege logs in conjunction with previously produced documents may serve to crystallize the need for additional relief.

TELEPHONIC HEARING (1 hour, 25 minutes)

Hearing Start Time: 10:00 a.m.

Hearing End Time: 11:25 a.m.