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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF ARIZONA

Terrence Bressi,

Plaintiff,

vs.

- (1) Pima County Sheriff Mark Napier, in his individual and official capacities;
- (2) Pima County Board of Supervisors;
- (3) Former Pima County Sheriff Clarence Dupnik, in his individual capacity;
- (4) Former Pima County Sheriff Christopher Nanos, in his individual capacity;
- (5) Pima County Deputy Sheriff Ryan Roher, in his individual capacity;
- (6) Pima County Deputy Sheriff Brian Kunze, in his individual capacity;
- (7) John Does 1-20 and Jane Does 1-20, Deputies, Sergeants, and/or Captains of Pima County

Case No. 4:18-cv-00186-DCB

FIRST AMENDED COMPLAINT

Sheriff's Department, in their individual capacities;

Defendants.

1
2 Plaintiff amends his Verified Complaint as follows:

3 JURISDICTION AND VENUE

4
5 1. This Court has subject matter jurisdiction over this action
6 pursuant to 28 U.S.C. §§ 1331, 1343, and 1346, 42 U.S.C. § 1983, and the
7 United States Constitution.

8 2. This Court has supplemental jurisdiction over the state law
9 claims pursuant to 28 U.S.C. § 1367, as the state law claim is so related to the
10 claims arising under the U.S. Constitution and federal statutes as to form part
11 of the same case or controversy.

12 3. This Court has authority to award injunctive and declaratory
13 relief pursuant to 28 U.S.C. §§ 1343, 2201, and 2202.

14 4. This Court has authority to award a reasonable attorney's fee
15 pursuant to 42 U.S.C. § 1988(b).

16 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as
17 Plaintiff resides in the District of Arizona and all events or omissions giving
18 rise to this claim occurred in the District of Arizona.

PARTIES

1
2 6. At all times relevant herein, Plaintiff has been a United States
3 citizen.

4 7. At all times relevant herein, Plaintiff has been a resident of Pima
5 County, Arizona.

6 8. Defendants Ryan Roher, Bryan Kunze, and Pima County Does 1-
7 20 were, at all relevant times, employees of the Pima County Sheriff's
8 Department ("PCSD"). These Defendants are hereafter referred to
9 collectively as the "individual county Defendants."

10 9. Defendant Mark Napier is the current Sheriff of Pima County.

11 10. Defendant Napier was the Sheriff of Pima County on April 10,
12 2017.

13 11. Pursuant to A.R.S. § 11-401, Defendant Napier is an officer of
14 Pima County.

15 12. Defendant Napier is the chief law enforcement officer in the
16 unincorporated portions of Pima County.

17 13. Pursuant to *Monell v. Department of Social Services*, 436 U.S.
18 658 (1978), Sheriff Napier is a final policymaker of Pima County in the area
19 of law enforcement.

1 14. At all times relevant herein, Defendant Napier acted under color
2 of state law.

3 15. Defendant Napier is sued in both his individual capacity and
4 official capacity.

5 16. Defendant Christopher Nanos served as the Sheriff of Pima
6 County from August 1, 2015, through January 1, 2017.

7 17. Pursuant to A.R.S. § 11-401, Defendant Nanos was an officer of
8 Pima County during his tenure as Sheriff.

9 18. During his tenure as Sheriff, Defendant Nanos acted under color
10 of state law in relation to his training and supervision of sworn officers
11 employed by PCSD.

12 19. Defendant Nanos is being sued in his individual capacity.

13 20. Defendant Clarence Dupnik served as Sheriff of Pima County
14 from February 1980 through August 1, 2015.

15 21. Pursuant to A.R.S. § 11-401, Defendant Dupnik was an officer of
16 Pima County during his tenure as Sheriff.

17 22. During his tenure as Sheriff, Defendant Dupnik acted under color
18 of state law in relation to his training and supervision of sworn officers
19 employed by PCSD.

20 23. Defendant Dupnik is being sued in his individual capacity.

1 24. At all relevant times herein, the individual county Defendants
2 were all sworn peace officers who were certified by Arizona Peace Officer
3 Standards & Training Board (“POST”), a nonprofit entity that was chartered
4 by the Arizona Legislature, receives annual state appropriations, and retains
5 exclusive authority to certify Arizona peace officers.

6 25. At all relevant times herein, the individual county Defendants
7 were employed by PCSD as sworn peace officers.

8 26. By virtue of their certification as peace officers by POST and
9 their employment by PCSD, the individual county Defendants had the
10 authority from the state of Arizona to enforce Arizona state criminal statutes.

11 27. At all times relevant herein, pursuant to A.R.S. § 13-3883, the
12 individual county Defendants were clothed with state authority to effectuate
13 warrantless arrests for misdemeanor and felony crimes where probable cause
14 exists to believe the person arrested committed such crime.

15 28. At all relevant times herein, the individual county Defendants
16 acted under color of state law.

17 29. Defendant Pima County Board of Supervisors is the legislative
18 body of Pima County, Arizona.

1 30. Pursuant to A.R.S. § 11-251, the Pima County Board of
2 Supervisors is responsible to “supervise the official conduct of all county
3 officers,” including that of the Sheriff.

4 31. Pursuant to A.R.S. § 11-444, the Pima County Board of
5 Supervisors has the authority to limit certain line items of Sheriff funding for
6 those expenses determined to cause illegal or unwarranted activities.

7 32. Pursuant to A.R.S. § 11-201, the Pima County Board of
8 Supervisors is responsible for setting the budget of all elected county officers,
9 including that of the Sheriff.

10 33. Overall, the Pima County Board of Supervisors has several tools
11 available to it to prospectively redress ongoing constitutional violations
12 caused by the acts or omissions of the Sheriff.

13 34. The Pima County Board of Supervisors has the authority to
14 accept, reject, and condition federal grants offered to elected county officers,
15 including grants offered to the Sheriff.

16 35. Among the federal grants over which the Pima County Board of
17 Supervisors has authority to accept, reject, and condition is a federal grant
18 program referred to as “Operation Stonegarden,” (also sometimes referred to
19 as “OPSG”) which is central to Plaintiff’s constitutional deprivation at issue
20 in this action.

1 36. At various times relevant to this action, individual county
2 Defendants were supervised by employees of U.S. Border Patrol pursuant to
3 the terms of the federal Operation Stonegarden grant extended to Pima
4 County Sheriff’s Department.

5 **FACTUAL ALLEGATIONS**

6 Arizona State Route 86 Checkpoint

7 37. From 1993 to the present, Plaintiff has routinely traveled Arizona
8 State Route 86 (hereafter “SR-86”) in Pima County, in the District of Arizona.

9 38. SR-86 is an east-west state highway that does not intersect the
10 United States/Mexico border at any point.

11 39. At its nearest point in Sells, Arizona, SR-86 is approximately 21
12 air miles from the nearest point along the United States/Mexico border.

13 40. Between 2005 and 2007, United States Customs and Border
14 Protection (“U.S. Border Patrol”) operated a checkpoint along SR-86 near
15 milepost 145 in Pima County, at irregular times and on irregular dates.

16 41. Between January 2008 and July 2010, U.S. Border Patrol
17 operated a checkpoint near milepost 145 on SR-86 in Pima County. In
18 August 2010, U.S. Border Patrol moved its checkpoint at milepost 145 to
19 milepost 146.5 on SR-86 in Pima County where it has been operated
20 continuously thereafter.

1 42. The checkpoint described at Paragraph 41 is located in an
2 unincorporated portion of Pima County.

3 43. The checkpoint described in Paragraph 41 is located
4 approximately 49 air miles from the nearest point along the United
5 States/Mexico border.

6 44. As used in this Complaint, the term “air mile” refers to the linear
7 distance between two points if one were to draw a straight line between those
8 two points. The term “air mile” is used here and is often referred to by the
9 term “as the crow flies”.

10 45. Despite the U.S. Border Patrol’s public statements to the
11 contrary, the checkpoint described in Paragraph 41 is operated for the primary
12 purpose of general crime control.

13 46. The U.S. Border Patrol’s primary purpose of operating the
14 checkpoint described at Paragraph 41 is not to intercept unauthorized aliens.

15 47. The checkpoint described at Paragraph 41 is not a sobriety
16 checkpoint.

17 48. The checkpoint described at Paragraph 41 is not conducted for
18 the purpose of checking motorists’ drivers’ licenses.

19 49. The checkpoint described at Paragraph 41 is not conducted for
20 the purpose of verifying that motorists possess automobile insurance.

1 50. The checkpoint described at Paragraph 41 is not conducted for
2 the purpose of enforcing laws related to vehicle weight limits.

3 51. In particular, the checkpoint described at Paragraph 41 has as its
4 primary purpose the detection and interdiction of illegal narcotics.

5 52. During the six-month period from October 29, 2015, through
6 April 29, 2016, the U.S. Border Patrol reports that there were zero
7 immigration-related arrests at the SR-86 checkpoint. During the same time
8 period, there were six narcotic-related arrests at the SR-86 checkpoint.

9 53. During the six-month period from April 29, 2016, through
10 October 29, 2016, the U.S. Border Patrol reports that there were 14
11 immigration-related arrests at the SR-86 checkpoint. During the same time
12 period, there were 21 narcotics-related arrests at the SR-86 checkpoint.

13 54. The SR-86 checkpoint is one of five U.S. Border Patrol
14 checkpoints currently located in the unincorporated portions of Pima County.

15 55. Since commencing regular federal checkpoint operations in
16 2008, U.S. Border Patrol have applied for and been granted state highway
17 encroachment permits from the Arizona Department of Transportation
18 (“ADOT”).

19 56. Under ADOT regulations, permits are required to be renewed on
20 an annual basis.

1 57. One of the terms of the encroachment permit issued to U.S.
2 Border Patrol for the SR-86 checkpoint in Pima County is that the checkpoint
3 may only be operated at irregular times and on irregular dates.

4 58. According to an official website of the Department of Homeland
5 Security maintained at <https://www.cbp.gov/border-security/along-us-borders/>
6 overview, the purpose of the United States Customs and Border Protection
7 checkpoints set up inside the United States is to: “(1) detect and apprehend
8 illegal aliens attempting to travel further into the interior of the United States
9 after evading detection at the border; and (2) to detect illegal narcotics.”

10 59. The United States Supreme Court clarified the lawful scope and
11 purpose of suspicionless checkpoints such as the one operated by the U.S.
12 Border Patrol along SR-86 in Arizona in *United States v. Martinez-Fuerte*,
13 428 U.S. 543 (1976) and *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.
14 Ct. 447 (2000). Checkpoints that include operations designed to detect illegal
15 narcotics and/or other ordinary criminal wrongdoing are unlawful.

16 Plaintiff’s Interactions at the SR-86 Checkpoint

17 60. Between 2005 and February 2018, Plaintiff has passed through
18 the SR-86 roadblock approximately 419 times.

19 61. At all times relevant herein, Plaintiff was driving his personal
20 vehicle.

1 62. Plaintiff's personal vehicle was widely known to and recognized
2 by individual Defendants as belonging to Plaintiff.

3 63. Plaintiff is a United States citizen, a fact known to Defendant
4 Roher and other county deputies at all times relevant herein.

5 64. Plaintiff traveled alone through the SR-86 checkpoint, a fact of
6 which the U.S. Border Patrol was aware. This action was predictable to U.S.
7 Border Patrol and raised absolutely no suspicion of human smuggling.

8 65. Employees of U.S. Border Patrol have routinely seized Plaintiff
9 at the SR-86 checkpoint, despite knowing Plaintiff's identity and citizenship.

10 66. U.S. Border Patrol uses law enforcement K-9 units at the SR-86
11 checkpoint.

12 67. At all times relevant herein, Defendants Napier, Dupnik, Nanos,
13 Roher, and Kunze were personally aware of the fact that U.S. Border Patrol
14 uses K-9 units at the SR-86 checkpoint.

15 68. On occasion, PCSD offers the use of PCSD K-9 units to U.S.
16 Border Patrol.

17 69. The U.S. Border Patrol trains its K-9 units to detect for the scent
18 of humans, cash, and more than one type of illegal narcotic.

19 70. At all times relevant herein, Defendants Napier, Dupnik, Nanos,
20 Roher, and Kunze were personally aware that U.S. Border Patrol K-9 units

1 operating at the SR-86 checkpoint were trained for and capable of detecting
2 the scent of narcotics.

3 71. On two occasions, U.S. Border Patrol placed dogs in the bed of
4 Plaintiff's pickup truck without lawful excuse, and without Plaintiff's consent.

5 72. On several occasions, U.S. Border Patrol have detained Plaintiff
6 at the checkpoint for the exclusive purpose of conducting a K-9 drug-
7 detection sniff around Plaintiff's vehicle.

8 73. Since April 10, 2017, Plaintiff has traveled through the SR-86
9 checkpoint on multiple occasions and intends to continue traveling through
10 the SR-86 checkpoint on a regular basis in the future.

11 Operation Stonegarden in Pima County

12 74. Since at least 2012, U.S. Border Patrol have conducted joint
13 operations with PCSD under a federal grant program known as "Operation
14 Stonegarden."

15 75. The stated purpose of Operation Stonegarden is to conduct "zero
16 tolerance" traffic contacts in certain portions of Pima County determined by
17 the U.S. Border Patrol to be areas of particular concern. This is sometimes
18 referred to as "saturation" within the law enforcement community, as the
19 purpose is to "saturate" a given geographic area with intensive traffic
20 enforcement during a given time period.

1 76. Operation Stonegarden is a federal grant program that pays
2 state, county, and local law enforcement agencies situated close to an
3 international border to work closely with the U.S. Border Patrol on federal
4 border security missions.

5 77. Operation Stonegarden provides federal grant dollars to local law
6 enforcement agencies, in part, to subsidize overtime wages of local law
7 enforcement officers who volunteer to work in excess of 40 hours per week
8 conducting joint missions with U.S. Border Patrol.

9 78. The Operation Stonegarden grant program does not confer any
10 federal immigration enforcement authority on state, county or local law
11 enforcement participants.

12 79. Neither Pima County nor PCSD has a joint memorandum of
13 agreement with the federal government under the program known as
14 “287(g)”, codified at 8 U.S.C. § 1357(g).

15 80. Nothing in federal law confers upon PCSD deputies the authority
16 to detain a motorist for the exclusive purpose of investigating potential civil
17 violations of federal immigration law.

18 81. Under the terms of Operation Stonegarden, PCSD must
19 coordinate its deployments with the U.S. Border Patrol.

1 82. Under the terms of Operation Stonegarden, the U.S. Border
2 Patrol retains authority to direct PCSD Deputies to certain locations, during
3 certain times, and with specific objectives determined by the Tucson Sector of
4 the U.S. Border Patrol.

5 83. During all times relevant herein, commanders employed by the
6 U.S. Border Patrol routinely assigned PCSD deputies to the SR-86 checkpoint
7 during Operation Stonegarden work shifts.

8 84. During all times relevant herein, during the times when PCSD
9 deputies were assigned by U.S. Border Patrol commanders to the SR-86
10 checkpoint, such deputies frequently would park their PCSD patrol vehicle on
11 the shoulder of SR-86 alongside official U.S. Border Patrol vehicles.

12 85. During all times relevant herein, U.S. Border Patrol agents
13 routinely allowed PCSD deputies to operate at the SR-86 checkpoint
14 regardless of whether or not the deputies had been explicitly assigned there as
15 part of the Operation Stonegarden grant program.

16 86. During all times relevant herein, U.S. Border Patrol agents
17 assigned to work at the SR-86 checkpoint have allowed and encouraged
18 PCSD deputies to engage in general law enforcement operations at the SR-86
19 checkpoint.

1 87. During all times relevant herein, PCSD deputies routinely had
2 contacts with motorists who were temporarily seized at the SR-86 checkpoint.

3 88. During all times relevant herein, PCSD deputies routinely issued
4 state law traffic citations to motorists while they were temporarily seized at
5 the SR-86 checkpoint.

6 89. During all times relevant herein, PCSD deputies routinely issued
7 state law traffic citations at the SR-86 checkpoint to motorists who had
8 already been determined by U.S. Border Patrol agents to possess lawful
9 immigration status.

10 90. Prior to April 10, 2017, Defendant Roher routinely issued state
11 law traffic citations at the SR-86 checkpoint to motorists who had already
12 been determined by U.S. Border Patrol agents to possess lawful immigration
13 status.

14 91. Prior to April 10, 2017, Defendants Napier, Nanos, Dupnik, and
15 Kunze were personally aware that PCSD routinely issued state law traffic
16 citations at the SR-86 checkpoint to motorists who had already been
17 determined by U.S. Border Patrol agents to possess lawful immigration status.

18 92. When assigned to the SR-86 checkpoint, a PCSD Deputy
19 routinely issues, on average, a larger number of state law traffic citations
20 during an 8-hour shift than he/she issues when patrolling for the same amount

1 of time on portions of the open highways that are unobstructed by a
2 checkpoint.

3 93. During one 8-hour work shift while assigned to the SR-86
4 checkpoint, Defendant Roher issued state law traffic citations to
5 approximately thirty (30) different motorists who passed through the SR-86
6 checkpoint during those 8-hours.

7 94. Most, if not all, of those motorists on that particular day had been
8 determined by U.S. Border Patrol agents located at the SR-86 checkpoint to
9 possess lawful immigration status prior to Defendant Roher's contact with
10 those motorists.

11 95. For example, on April 10, 2017, (the same day on which
12 Defendant's underlying constitutional deprivations occurred) Defendant
13 Roher observed that a vehicle in line at the SR-86 checkpoint had a long crack
14 in its windshield, which is a vehicle equipment violation under Arizona state
15 law.

16 96. As the vehicle entered the primary lane of the SR-86 checkpoint,
17 Defendant Roher asked the U.S. Border Patrol agent to refer the vehicle to the
18 secondary lane within the Border Patrol checkpoint area.

1 97. Once in the secondary lane, Defendant Roher found that the
2 driver's license had been suspended and proceeded to issue a state law
3 citation to the driver and have the vehicle towed.

4 98. Defendants Roher and Kunze were both earning overtime wages
5 on April 10, 2017, pursuant to PCSD's participation in the Operation
6 Stonegarden program.

7 99. On at least two occasions since 2013, U.S. Border Patrol agents
8 have called PCSD deputies to the SR-86 checkpoint while detaining Plaintiff
9 at the checkpoint's primary stop location.

10 100. The PCSD deputies called to the scene on these occasions were
11 conducting Operation Stonegarden deployments in collaboration with the U.S.
12 Border Patrol.

13 101. Defendant Pima County Board of Supervisors must approve each
14 Operation Stonegarden grant award.

15 102. On May 16, 2017, Defendant Pima County Board of Supervisors
16 approved the receipt of Operation Stonegarden funding to be distributed to
17 PCSD. They approved such funding without qualification or conditions.

18 103. On February 16, 2016, Defendant Pima County Board of
19 Supervisors approved the receipt of Operation Stonegarden funding to be

1 distributed to PCSD. They approved such funding without qualification or
2 conditions.

3 104. On February 20, 2018, Defendant Pima County Board of
4 Supervisors voted to approve the receipt of \$1,429,175 of Operation
5 Stonegarden funding contingent upon several specific conditions.

6 105. Upon information and belief, since February 20, 2018, no one
7 has challenged Defendant Pima County Board of Supervisors' legal authority
8 to approve such federal grant money on a conditional basis.

9 Training and Supervision of Pima County Sheriff's Deputies

10 106. At all times relevant herein, PCSD did not have internal
11 regulations, rules, guidelines, directives, written guidance, or protocols
12 pertaining to Operation Stonegarden deployments.

13 107. At all times relevant herein, PCSD did not have internal
14 regulations, rules, guidelines, directives, written guidance, or protocols
15 pertaining to deputies who station themselves at a U.S. Border Patrol
16 checkpoint.

17 108. At all times relevant herein, PCSD did not offer Operation
18 Stonegarden training to its deputies.

19 109. Upon information and belief, PCSD used none of the federal
20 Operation Stonegarden grant funding it received in 2016 and 2017 (described

1 at Paragraphs 102 and 103) to develop or disseminate specialized training to
2 those of its sworn deputies participating in Operation Stonegarden
3 deployments.

4 110. With the exception of issues related to deployments at
5 international ports of entry, at all times relevant herein, the U.S. Border Patrol
6 did not share with PCSD any training materials related to the proper execution
7 of Operation Stonegarden deployments.

8 111. At all times relevant herein, the U.S. Border Patrol did not share
9 with PCSD any training materials related to proper law enforcement functions
10 at Border Patrol checkpoints.

11 112. Upon information and belief, at all times relevant herein, PCSD
12 did not disseminate to any of its deputies any training materials related to the
13 U.S. Supreme Court's decision in *Martinez-Fuerte v. United States*, 428 U.S.
14 543 (1976).

15 113. Upon information and belief, at all times relevant herein, PCSD
16 did not disseminate to any of its deputies any training materials related to the
17 U.S. Supreme Court's decision in *City of Indianapolis v. Edmond*, 531 U.S.
18 32 (2000).

1 114. At all times relevant herein, PCSD deputies routinely
2 participated in Operation Stonegarden deployments at the SR-86 checkpoint
3 without having received training specific to Border Patrol checkpoints.

4 115. At all times relevant herein, Defendant Roher did not receive
5 training specific to Border Patrol checkpoints.

6 116. At all times relevant herein, with the exception of deployments
7 taking place at international ports of entry, PCSD permitted its deputies to
8 conduct Operation Stonegarden deployments without undergoing special or
9 additional training.

10 117. Defendant Dupnik took no steps during his tenure to develop or
11 disseminate training materials related to Operation Stonegarden.

12 118. Defendant Dupnik took no steps during his tenure to develop or
13 promulgate internal rules, regulations, guidelines, guidance, protocols or
14 directives related to Operation Stonegarden.

15 119. Defendant Dupnik took no steps during his tenure to develop or
16 promulgate internal rules, regulations, guidelines, guidance, protocols or
17 directives related to PCSD duties while stationed at Border Patrol
18 checkpoints.

1 120. Defendant Nanos took no steps during his tenure to develop or
2 promulgate internal rules, regulations, guidelines, guidance, protocols or
3 directives related to Operation Stonegarden.

4 121. Defendant former Sheriff Nanos took no steps during his tenure
5 to develop or promulgate internal rules, regulations, guidelines, guidance,
6 protocols or directives related to PCSD duties while stationed at Border Patrol
7 checkpoints.

8 122. At all times relevant herein, Defendant Napier took no steps to
9 develop or disseminate training materials related to Operation Stonegarden.

10 123. At all times relevant herein, Defendant Napier took no steps to
11 develop or disseminate training materials related to PCSD duties while
12 stationed at Border Patrol checkpoints.

13 124. At all times relevant herein, Defendant Napier took no steps to
14 develop internal policies, rules, regulations, protocols, guidelines, guidance,
15 protocols or directives related to Operation Stonegarden.

16 125. At all times relevant herein, Defendant Napier took no steps to
17 develop internal policies, rules, regulations, protocols, guidelines, protocols or
18 directives related to PCSD duties while stationed at Border Patrol
19 checkpoints.

1 126. PCSD maintains a document issued to every deputy employed by
2 PCSD called the “Pima County Sheriff’s Department Rules and Regulations
3 Manual.” The current document is available at:
4 <https://www.pimasheriff.org/about-us/rules-and-regulations/>.

5 127. The document described in Paragraph 126 is designed to guide
6 members of the Pima County Sheriff’s Department in carrying out the duties,
7 responsibilities, and obligations set forth by law, or assumed by them, in order
8 to fulfill the mission of the Department.

9 128. Upon information and belief, PCSD, under the direction of the
10 Sheriff, undertakes an annual review of the document described in Paragraph
11 126 to ensure that the document reflects the latest developments in the law.

12 129. The current version of the document described in Paragraph 126
13 consists of 419 pages, not including the preface, index, and table of contents.

14 130. On April 10, 2017, the then-operative version of the document
15 described in Paragraph 126 provided instructions and guidance related to the
16 proper operation of a sobriety checkpoint.

17 131. Pursuant to the document described in Paragraph 126, PCSD
18 deputies who participate in sobriety checkpoints are required to attend an
19 “operation specific briefing” prior to their participation in said checkpoint.

1 132. PCSD requires no “operation specific briefing” of PCSD
2 deputies planning to participate in Operation Stonegarden deployments at
3 Border Patrol checkpoints.

4 133. On April 10, 2017, the then-operative version of the document
5 described in Paragraph 126 nowhere mentioned Border Patrol checkpoints.

6 134. On April 10, 2017, the then-operative version of the document
7 described in Paragraph 126 nowhere mentioned Operation Stonegarden.

8 135. Upon information and belief, between 2008 and 2017, neither
9 Defendant Dupnik, Defendant Nanos, nor Defendant Napier undertook or
10 directed their subordinates to undertake any review of the document described
11 in Paragraph 126 for the purpose of ensuring that PCSD operations at Border
12 Patrol checkpoints were consistent with current law.

13 136. Upon information and belief, at all times relevant herein,
14 Defendants Dupnik, Nanos, and Napier were on notice that their deputies
15 were regularly undertaking general law enforcement efforts while positioned
16 directly at Border Patrol checkpoints located in unincorporated portions of
17 Pima County.

18 137. Upon information and belief, during all times relevant herein,
19 Defendants Dupnik, Nanos, and Napier were personally aware that certain

1 motorists had been cited by PCSD deputies for state law traffic violations
2 while PCSD deputies were positioned at the SR-86 checkpoint.

3 138. Upon information and belief, prior to Plaintiff's arrest on April
4 10, 2017, subordinates of Defendant Napier, including at least one of the
5 Chiefs of PCSD, were personally familiar with Plaintiff and were personally
6 familiar with his interactions with PCSD deputies at the SR-86 checkpoint.

7 April 10, 2017 Incident at SR-86 Checkpoint

8 139. On three occasions since 2013, Plaintiff was cited under state law
9 at the SR-86 checkpoint by PCSD Deputies who were working in
10 collaboration with the U.S. Border Patrol under Operation Stonegarden.

11 140. The most recent of those occasions was on April 10, 2017, the
12 subject of this lawsuit.

13 141. On April 10, 2017, Plaintiff was traveling eastbound on SR-86
14 and came upon the Border Patrol checkpoint described herein at Paragraph
15 41.

16 142. Plaintiff slowed down and brought his vehicle to a complete stop,
17 as indicated by the traffic signs.

18 143. Plaintiff lowered his window slightly to enable himself to hear
19 the instructions from the Border Patrol agent on duty at the checkpoint.

1 144. Agent Frye of the U.S. Border Patrol asked Plaintiff to declare
2 whether or not Plaintiff is a U.S. citizen.

3 145. In exercising his First Amendment right not to speak, Plaintiff
4 declined to declare his citizenship status.

5 146. As a direct result of Plaintiff's choice not to declare his
6 citizenship status, Agent Frye indicated to Plaintiff that Plaintiff was not free
7 to leave and was not free to proceed down the highway.

8 147. Accordingly, Plaintiff remained seated in the driver seat of his
9 vehicle and remained at a complete stop within the confines of the SR-86
10 Border Patrol checkpoint.

11 148. After approximately 80 seconds of Plaintiff being detained by
12 Agent Frye at the checkpoint, Agent Frye asked another agent on the South
13 side of the checkpoint where the supervisor went.

14 149. A few seconds later, Defendant Roher began approaching the
15 scene by foot from where he had been stationed on the South side of the
16 checkpoint's primary stop location.

17 150. At the time, Defendant Roher was working an eight-hour
18 Operation Stonegarden shift.

19 151. At this moment, Defendant Roher assumed control of the law
20 enforcement interaction with Plaintiff.

1 152. Upon taking over the law enforcement interaction with Plaintiff,
2 Defendant Roher learned from Agent Frye that he had refused to allow
3 Plaintiff to proceed down the highway because Plaintiff had not yet declared
4 his citizenship status.

5 153. Defendant Roher then explained to Plaintiff that Plaintiff needed
6 to answer Agent Frye's immigration questions.

7 154. When Defendant Roher continued detaining Plaintiff in the lane
8 of traffic, Plaintiff asked Defendant Roher what law he thought Plaintiff was
9 violating.

10 155. In response, Defendant Roher indicated Plaintiff could leave the
11 checkpoint.

12 156. The total elapsed time that Defendant Roher detained Plaintiff at
13 the same spot where Plaintiff had initially come to a complete stop while
14 being detained by Agent Frye was approximately 64 seconds.

15 157. Plaintiff immediately complied with Defendant Roher's
16 instruction to leave the checkpoint and began to drive down the highway.

17 158. While beginning to accelerate away from the Border Patrol
18 checkpoint, Plaintiff glanced in his mirror and immediately noticed that
19 Defendant Roher was running toward his PCSD patrol vehicle.

1 159. Plaintiff interpreted this movement by Defendant Roher as a
2 clear indication that Defendant Roher intended to effectuate a traffic stop on
3 Plaintiff.

4 160. Plaintiff then pulled his vehicle to the right shoulder of SR-86,
5 several dozen yards east of the Border Patrol checkpoint.

6 161. Defendant Roher got into his PCSD patrol vehicle and drove
7 several dozen yards to where Plaintiff was now parked on the right-hand
8 shoulder of SR-86.

9 162. Plaintiff remained seated in the driver seat of his vehicle, and
10 Defendant Roher exited his PCSD patrol vehicle and approached Plaintiff's
11 driver-side window.

12 163. Defendant Roher requested Plaintiff to exit his vehicle.

13 164. When Plaintiff requested to know whether he was being
14 detained, Defendant Roher ordered Plaintiff out of his vehicle without
15 answering the question.

16 165. Plaintiff exited his vehicle.

17 166. Defendant Roher requested Plaintiff to provide his photo
18 identification.

1 167. Plaintiff handed his photo identification to Defendant Roher,
2 asked him who his supervisor was, and asked him to call his supervisor to the
3 scene.

4 168. After failing to answer some of Defendant Roher's questions,
5 Defendant Roher arrested and handcuffed Plaintiff.

6 169. In violation of A.R.S. § 13-3888, Defendant Roher failed to
7 inform Plaintiff of his authority and the cause for the arrest.

8 170. After effectuating the arrest, Defendant Roher revealed to
9 Plaintiff that he had been familiar with Plaintiff prior to that day and knew
10 that Plaintiff passed through the SR-86 checkpoint on a somewhat regular
11 basis.

12 171. Defendant Roher revealed to Plaintiff that he was familiar with
13 Plaintiff's views regarding Border Patrol checkpoints.

14 172. Defendant Roher revealed to Plaintiff that he was aware that
15 Plaintiff was delayed in the lane of traffic at the Border Patrol checkpoint
16 because a federal agent was detaining him there.

17 173. While Plaintiff was still in handcuffs, Defendant Kunze arrived
18 to the scene. Defendant Kunze ratified Defendant Roher's decision to arrest
19 Plaintiff.

1 174. Months following the April 10, 2017, arrest, Defendant Roher
2 admitted to discussing Plaintiff with Border Patrol employees prior to April
3 10, 2017.

4 175. On or about September 27, 2017, through a process server,
5 Plaintiff served Notices of Claim pursuant to A.R.S. § 12-821.01, to
6 Defendant Pima County Board of Supervisors; Defendant Pima County
7 Sheriff's Department; Defendant Pima County Sheriff Mark Napier;
8 Defendant Pima County Deputy Ryan Roher; and Defendant Pima County
9 Deputy Brian Kunze.

10 **COUNT I**
11 **VIOLATION OF FIRST AND FOURTEENTH AMENDMENT RIGHTS**
12 **42 U.S.C. § 1983**
13
14

15 176. Plaintiff reasserts those allegations contained in paragraphs 1-
16 175 as though fully set forth herein.

17 177. On April 10, 2017, Plaintiff was exercising his First Amendment
18 right not to speak, a clearly established right first articulated by the U.S.
19 Supreme Court in 1943 and subsequently reaffirmed and upheld numerous
20 times in the intervening years.

21 178. Defendants Roher and Kunze were aware at all relevant times
22 that Plaintiff was exercising this First Amendment right not to speak on April
23 10, 2017.

1 179. Defendants Roher and Kunze were aware at all times that
2 Plaintiff had not moved from the checkpoint because law enforcement
3 officials refused to allow Plaintiff to continue down the highway without first
4 speaking on a topic about which Plaintiff desired not to speak.

5 180. Defendant Roher was aware of no law – local, state, or federal –
6 that required U.S. citizen motorists such as Plaintiff to declare their
7 citizenship status at a Border Patrol checkpoint.

8 181. Defendant Roher retaliated against Plaintiff by effectuating an
9 arrest, in direct response to Plaintiff's unwillingness to speak on a topic about
10 which Plaintiff desired not to speak.

11 182. Defendant Kunze ratified Defendant Roher's retaliatory arrest.

12 183. Defendant Roher's and Defendant Kunze's actions would 'chill a
13 person of ordinary firmness' from continuing to engage in the First
14 Amendment protected activity.

15 184. The exercise of Plaintiff's protected right was a substantial and
16 motivating factor for the Defendants' conduct and reveals the intention to
17 interfere with Plaintiff's First Amendment rights.

18 185. The First and Fourteenth Amendment right not to speak in this
19 particular context was clearly established as of April 10, 2017.

1 186. Defendants Roher and Kunze were acting under color of state
2 law.

3 187. Plaintiff has suffered, and continues to suffer, harm as a direct
4 result of the First Amendment retaliatory arrest effectuated by Defendants on
5 April 10, 2017.

6 188. Under this Count, Plaintiff seeks monetary damages pursuant to
7 42 U.S.C. § 1983 against Defendants Roher and Kunze for his April 10, 2017,
8 deprivation of his First and Fourteenth Amendment right to Free Speech.

9 189. Under this Count, Plaintiff seeks declaratory and injunctive relief
10 to prevent future deprivations of Plaintiff's First and Fourteenth Amendment
11 right to Free Speech.

12 **COUNT II**
13 **VIOLATION OF FOURTH AND FOURTEENTH AMENDMENT RIGHTS**
14 **PURSUANT TO *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000)**
15 **42 U.S.C. § 1983**
16

17 190. Plaintiff reasserts those allegations contained in paragraphs 1-
18 189 as though fully set forth herein.

19 191. Pursuant to *Martinez-Fuerte v. United States*, 428 U.S. 543
20 (1976), and consistent with the Fourth Amendment, the U.S. Border Patrol
21 has the legal authority to maintain the SR-86 checkpoint for the primary
22 purpose of detecting and apprehending individuals unlawfully present in the
23 United States.

1 192. Pursuant to *Martinez-Fuerte v. United States*, 428 U.S. 543
2 (1976), the U.S. Border Patrol has the legal authority to briefly seize, absent
3 particularized suspicion, motorists passing through the SR-86 checkpoint for
4 the limited purpose of asking one or two questions intended to confirm that
5 the vehicle contains no unlawfully present aliens.

6 193. The ability of the U.S. Border Patrol to briefly seize motorists at
7 the SR-86 checkpoint without particularized suspicion is contingent upon the
8 U.S. Border Patrol's maintaining such checkpoint for the primary purpose of
9 enforcing the nation's immigration laws.

10 194. The Border Patrol's primary purpose for operating the SR-86
11 checkpoint is not to detect and apprehend aliens who are unlawfully present in
12 the U.S.

13 195. In particular, on April 10, 2017, the U.S. Border Patrol operated
14 the SR-86 checkpoint in such a manner that its primary purpose for operating
15 the checkpoint on that particular day was for general law enforcement
16 purposes.

17 196. Upon arriving at the SR-86 Border Patrol checkpoint on April
18 10, 2017, Plaintiff was unlawfully seized and detained by U.S. Border Patrol
19 agents, as the U.S. Border Patrol possessed no particularized suspicion to
20 believe that Plaintiff's vehicle contained aliens unlawfully present in the U.S.

1 197. The U.S. Border Patrol on that particular day was operating the
2 checkpoint in such a manner that the primary purpose of the checkpoint was
3 for detection of general criminal wrongdoing rather than for the primary
4 purpose of detecting and apprehending aliens unlawfully present in the U.S.

5 198. During the course of Plaintiff's seizure at the SR-86 checkpoint,
6 U.S. Border Patrol agents handed the law enforcement interaction over to
7 Defendant Roher, who was specifically assigned to work at the SR-86
8 checkpoint on that particular day. This action evidences that the primary
9 purpose of the SR-86 checkpoint on April 10, 2017, was not the detection and
10 apprehension of aliens unlawfully present in the U.S.

11 199. Defendant Roher knowingly restrained the liberty of Plaintiff
12 without particularized suspicion at a location that the Fourth Amendment
13 authorizes be done only by federal law enforcement agents for a limited
14 immigration-related purpose.

15 200. Defendant Roher knowingly restrained the liberty of Plaintiff
16 without particularized suspicion, despite the fact that Defendant Roher lacked
17 the legal authority to investigate possible violations of federal immigration
18 law – the only purpose for which the existence of the SR-86 checkpoint is
19 authorized.

20 201. Defendant Roher was acting under color of state law.

1 202. Plaintiff's right to be free from suspicionless seizures under these
2 circumstances has been clearly established since at least the year 2000.

3 203. Plaintiff is entitled to declaratory and injunctive relief for this
4 Fourth and Fourteenth Amendment deprivation, pursuant to the Fourth
5 Amendment principles established in *City of Indianapolis v. Edmond*.

6 204. Plaintiff is entitled to monetary damages pursuant to 42 U.S.C. §
7 1983 for this Fourth and Fourteenth Amendment violation.

8 **COUNT III**
9 **VIOLATION OF FOURTH AND FOURTEENTH AMENDMENT**
10 **RIGHTS FOR ARREST ABSENT PROBABLE CAUSE**
11 **42 U.S.C. § 1983**
12

13 205. Plaintiff reasserts those allegations contained in paragraphs 1-
14 204 as though fully set forth herein.

15 206. Absent particularized suspicion that a particular vehicle contains
16 unlawfully present aliens or that the vehicle's occupants are violating other
17 federal laws, the U.S. Border Patrol lacks legal authority to insist that a
18 motorist move his or her vehicle to a secondary lane within the checkpoint
19 area.

20 207. On April 10, 2017, U.S. Border Patrol agents and Defendant
21 Roher insisted that Plaintiff move his vehicle into the secondary inspection
22 lane of the SR-86 checkpoint without possessing particularized suspicion that
23 Plaintiff's vehicle contained aliens unlawfully present in the U.S. and without

1 particularized suspicion that Plaintiff had committed any state or federal
2 crime for which Defendant Roher had legal authority to arrest.

3 208. Defendant Roher was aware that U.S. Border Patrol agents had
4 found no particularized suspicion to continue detention of or to arrest
5 Plaintiff.

6 209. Defendant Roher was similarly unable to articulate any
7 reasonable suspicion or probable cause to believe that Plaintiff had committed
8 or was committing a state misdemeanor, felony or petty offense.

9 210. Defendant Roher arrested Plaintiff for allegedly violating A.R.S.
10 § 13-2906 (Obstructing a highway or other public thoroughfare), despite the
11 fact that Defendant Roher had no probable cause to believe that Plaintiff
12 committed or was committing such crime.

13 211. Defendant Kunze ratified Defendant Roher's actions and further
14 prolonged the length of Plaintiff's arrest, despite the fact that Defendant
15 Kunze lacked probable cause to believe that Plaintiff committed any crime.

16 212. Defendants Roher and Kunze were acting under color of state
17 law.

18 213. Plaintiff's right to be free from arrest absent probable cause to
19 believe that he committed or was committing a crime was clearly established
20 as of April 10, 2017.

1 214. Under this Count, Plaintiff is entitled to injunctive and
2 declaratory relief related to his arrest by Defendants Roher and Kunze without
3 probable cause to believe that Plaintiff committed or was committing a crime.

4 215. Under this Count, Plaintiff is entitled to monetary damages
5 pursuant to 42 U.S.C. § 1983.

6 COUNT IV
7 VIOLATION OF 42 U.S.C. § 1983, PURSUANT TO *MONELL*, AS
8 AGAINST DEFENDANT NAPIER, IN HIS OFFICIAL CAPACITY

9
10 216. Plaintiff reasserts those allegations contained in paragraphs 1-
11 215 as though fully set forth herein.

12 217. As Sheriff, Defendant Napier is a final policymaker over the
13 County's law enforcement matters.

14 218. Defendant Napier created a custom and practice of routinely
15 permitting PCSD deputies, including Defendant Roher, to serve entire work
16 shifts while stationed at the SR-86 checkpoint.

17 219. This custom and practice routinely put PCSD in a position of
18 depriving motorists of their constitutional rights under the Fourth and
19 Fourteenth Amendments, by converting an already-questionable Border Patrol
20 checkpoint devoted primarily to general law enforcement purposes into a
21 checkpoint unquestionably tipping into the unconstitutional zone, in clear
22 violation of *City of Indianapolis v. Edmond*.

1 220. Defendant Napier's actions, creating a custom and practice
 2 related to operations at the SR-86 checkpoint, amounted to deliberate
 3 indifference of Plaintiff's constitutional rights.

4 221. Plaintiff has been injured by this custom and practice and is
 5 entitled to damages against Defendant Napier in his official capacity for
 6 maintaining a custom or practice within PCSD that is likely to deprive local
 7 residents, such as Plaintiff, of their Fourth and Fourteenth Amendment rights.

8 COUNT V
 9 VIOLATION OF 42 U.S.C. § 1983, FAILURE TO TRAIN, AS TO
 10 DEFENDANT NAPIER IN HIS INDIVIDUAL CAPACITY AND AS TO
 11 DEFENDANTS DUPNIK, NANOS, KUNZE, DOE DEFENDANTS 1-20,
 12 AND DEFENDANT PIMA COUNTY BOARD OF SUPERVISORS
 13

14 222. Plaintiff reasserts the allegations contained in paragraphs 1-221
 15 as though fully set forth herein.

16 223. Prior to April 10, 2017, there existed a pattern of similar
 17 constitutional violations by similarly untrained employees of PCSD.

18 224. Defendants Pima County Supervisors, failed to enforce proper
 19 training of the Pima County Sheriff's Department Deputies and, therefore,
 20 failed to adequately train their deputies to handle usual and recurring
 21 situations.

22 225. Defendant Pima County Board of Supervisors were indifferent to
 23 the substantial risk of inadequate policies to prevent violations of law by its

1 Sheriff's deputies. The failure to do so caused the deprivation of Plaintiff's
2 constitutional rights.

3 226. Defendants failed to train their deputies to handle usual and
4 recurring situations.

5 227. Defendants were indifferent to the substantial risk of inadequate
6 policies to prevent violations of law by its deputies.

7 228. Defendants' failure to do so caused the deprivation of Plaintiff's
8 constitutional rights.

9 229. Defendant Pima County Board of Supervisors and Defendant
10 Sheriffs could have prevented the constitutional violation of Plaintiff with an
11 appropriate policy.

12 230. As a result, Plaintiff has been injured and is entitled to damages.

13 **COUNT VI**

14 **VIOLATION OF 42 U.S.C. § 1983, FAILURE TO SUPERVISE, AS TO**
15 **DEFENDANT NAPIER IN HIS INDIVIDUAL CAPACITY, AND AS TO**
16 **DEFENDANTS DUPNIK, NANOS, KUNZE, DOE DEFENDANTS 1-20,**
17 **AND DEFENDANT PIMA COUNTY BOARD OF SUPERVISORS**
18

19 231. Plaintiff reasserts the allegations contained in paragraphs 1-230
20 as though fully set forth herein.

21 232. Defendants were acting under the color of state law.

22 233. Defendants failed to properly supervise their deputies, thereby
23 depriving Plaintiff of his constitutional rights.

1 242. Plaintiff reasserts the allegations contained in paragraphs 1-241
2 as though fully set forth herein.

3 243. On April 10, 2017, Plaintiff was falsely imprisoned by Defendant
4 Roher when he was handcuffed and prevented from leaving his location
5 outside of the SR-86 checkpoint.

6 244. The necessary elements to prove false imprisonment are: (1) the
7 defendant acted with intent to confine another person within boundaries fixed
8 by the defendant; (2) the defendant's act resulted in such confinement, either
9 directly or indirectly; and (3) the other person was conscious of the
10 confinement or was harmed by it. *See Hart v. Raynor*, 190 Ariz. 272, 281,
11 947 P.2d 846, 855 (App. 1997). "Any restraint, however slight, upon
12 another's liberty to come and go as one pleases, *constitutes* an arrest." *See*
13 *Boies v. Raynor*, 89 Ariz. 257, 259, 361 P.2d 1, 2 (1961), *quoting Swetman v.*
14 *F.W. Woolworth Co.*, 83 Ariz. 189, 192, 318 P.2d 364, 366 (1957).

15 245. Defendant Roher acted with intent and confined Plaintiff within a
16 fixed boundary.

17 246. Defendant Roher's conduct resulted in the confinement of
18 Plaintiff, without Plaintiff's consent, and without probable suspicion of any
19 crime committed by Plaintiff.

1 247. Plaintiff was conscious of the confinement inflicted upon him by
2 Defendant Roher and confirmed by Defendant Kunze on April 10, 2017.

3 248. Plaintiff has been damaged and is entitled to monetary damages.

4 **REQUEST FOR RELIEF**

5 WHEREFORE, Plaintiff prays that the Court grant relief as follows:

6 1. By granting judgment in favor of Plaintiff on all counts
7 herein and awarding damages in an amount to be determined at
8 trial.

9 2. By awarding injunctive relief, as outlined in the above
10 Counts.

11 3. By awarding declaratory relief, as outlined in the above
12 Counts.

13 4. By awarding punitive or exemplary damages, pursuant to
14 42 U.S.C. § 1983.

15 3. By awarding Plaintiff his attorney's fees and costs.

16 4. By awarding such other relief as is appropriate.
17

18 Dated this 2nd day of July 2018.

19
20 Ralph E. Ellinwood, Attorney at Law, PLLC

21
22
23 /s/ Ralph E. Ellinwood

24 Ralph E. Ellinwood
25 Attorney for Plaintiff