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10  
11 IN THE UNITED STATES DISTRICT COURT  
12 IN AND FOR THE DISTRICT OF ARIZONA  
13

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 Sheriff's

Case No. 4:18-cv-00186 DCB

JOINT CASE  
MANAGEMENT PLAN

Department, in their individual capacities;

Defendants.

1  
2 **1. Counsel appearing at the Pretrial Scheduling Conference:**

3  
4 On behalf of Plaintiff:

5  
6 Ralph E. Ellinwood, Esq.  
7 (520) 413-2323

8  
9 On behalf of Defendants:

10  
11 Nancy J. Davis, Esq.  
12 (520) 724-5700

13  
14 **2. Nature of the case; factual and legal basis of claims and**  
15 **defenses:**

16  
17 Plaintiff:

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19 Violations of the First, Fourth, and Fourteenth Amendments to the  
20 United States Constitution. Individual right not to speak violated; violations  
21 pursuant to *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000); arrest absent  
22 probable cause; false imprisonment.

23  
24 Violations of 42 U.S.C. § 1983. Violations of Plaintiff's constitutional  
25 rights. Violations of failing to train and/or failure to supervise personnel.

26  
27 Violation of Plaintiff's rights under A.R.S. § 13-2906(A)(1), legal  
28 privilege to obstruct highway when stopped by law enforcement operating  
29 under a state-issued encroachment permit. *See Mack v. Dellas, et al.*, Arizona  
30 Court of Appeals, Case No. 1 CA-CV 13-0492, dated May 22, 2014.

31  
32 Defendants:

33  
34 Failure to state a claim for which relief may be granted. See each defense  
35 set forth below.  
36

1           Qualified Immunity: Each individually-named defendant asserts  
2 Qualified Immunity. Plaintiff must show that each individual committed a  
3 constitutional violation and/or that said conduct violated clearly-established  
4 law because individual government officials who are sued under 42 U.S.C.  
5 § 1983 can assert the defense of qualified immunity. *Pearson v. Callahan*, 555  
6 U.S. 223, 231 (2009). Plaintiff “must ‘identify a case where an officer acting  
7 under similar circumstances as [the defendants were] was held to have violated  
8 the Fourth Amendment.’” *Sharp*, 871 F.3d at 911 quoting *White v. Pauly*, —  
9 U.S. —, 137 S. Ct. 548, 552 (2017) (*per curiam*). The case law must  
10 articulate “a constitutional rule specific enough to alert *these* deputies *in this*  
11 *case* that *their particular conduct* was unlawful.” *Id.* (emphases in original).

12  
13           Probable Cause and Reasonable Suspicion is a defense to Plaintiff’s  
14 First, Fourth, and Fourteenth Amendment claims: Deputy Roher asserts he had  
15 probable cause and/or reasonable suspicion to detain, arrest, and cite Bressi for  
16 blocking a public roadway. *Reichle v. Howards*, 566 U.S. 658, 664–65 (2012)  
17 (holding the Supreme “Court has never recognized a First Amendment right to  
18 be free from a retaliatory arrest that is supported by probable cause”). Probable  
19 cause and reasonable suspicion are also a complete defense to a Fourth  
20 Amendment claim of unlawful seizure. *Devenpeck v. Alford*, 543 U.S. 146, 152  
21 (2004).

22  
23           Statute of Limitations: Defendants Dupnik and Nano assert the two-year  
24 Statute of Limitations for § 1983 action with respect to all claims against them.  
25 Neither Dupnik nor Nanos were sheriff when Deputy Roher interacted with  
26 Plaintiff Bressi. To the extent Plaintiff is complaining about conduct that  
27 occurred more than two years prior to the subject incident, the statute of  
28 limitations bars those claims as well. Possible statute of limitations with respect  
29 to the state-law claim, *see* A.R.S. § 12-821, against Roher and Kunze if the  
30 state-law claim is found not to relate back. It is Defendants’ position that any  
31 claim barred by the 1 or 2 year statute of limitations is subject to dismissal.

32  
33           Injunctive Relief is not proper: Plaintiff seeks prospective injunctive  
34 relief. Pima County has rejected Stonegarden funding for 2018. It has no  
35 accepted funding for any future years. Moreover, Sheriff Napier does not allow  
36 deputies to work or station themselves at Border Patrol checkpoints. Thus,  
37 Plaintiff lacks the requisite standing to pursue this claim as he cannot show “a  
38 sufficient likelihood that he will again be wronged in a similar way.” *See City*  
39 *of Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983). It is Defendants’ position  
40 that this claim is subject to dismissal.

1            Monell and failure to supervise (policy of action or inaction): There is no  
2 *respondeat superior* liability under § 1983. Plaintiff must show there was a  
3 long-standing policy, practice, or custom that caused his civil rights to be  
4 violated. This requires either a specific policy, or in the absence of that, a  
5 pattern of such conduct. Isolated incidences are insufficient. Defendants assert  
6 there was no such policy, practice, or custom. Sheriff Napier denies he allowed  
7 any deputies to work at border patrol checkpoints, much less to work entire  
8 shifts at them. “To impose liability against a county for its failure to act, a  
9 plaintiff must show: (1) that a county employee violated the plaintiff’s  
10 constitutional rights; (2) that the county has customs or policies that amount to  
11 deliberate indifference; and (3) that these customs or policies were the moving  
12 force behind the employee’s violation of constitutional rights.” *Long v. County*  
13 *of Los Angeles*, 442 F.3d 1178, 1186 (9th Cir. 2006).

14            Failure to train under § 1983: requires Plaintiff to show deliberate  
15 indifference. *City of Canton, Ohio v. Harris*, 489 U.S. 378 (1989).

16  
17            State-law false imprisonment claim: “A detention which occurs pursuant  
18 to legal authority” such as probable cause is lawful and does not constitute the  
19 tort of false imprisonment. *Slade v. City of Phoenix*, 112 Ariz. 298, 300 (1975).  
20 Deputy Roher asserts he had probable cause.

21  
22            Punitive damages: Are not allowed for state-law claims (A.R.S. § 12-  
23 820.04) and, as to federal claim, can only be assessed against individuals sued  
24 in their individual capacity.

25  
26            **3. Factual and legal issues genuinely in dispute and whether they**  
27 **can be narrowed by stipulation or motions:**

28  
29            Plaintiff:

30  
31            On multiple occasions, Plaintiff’s First Amendment right not to speak  
32 has been violated. In the instant case, Plaintiff was told not to move from the  
33 checkpoint area and was falsely arrested for blocking a roadway.

34  
35            Violations of *Martinez-Fuerte v. United States*, 428 U.S. 543 (1976).  
36 This case gives the Border Patrol the authority to maintain a limited scope  
37 immigration checkpoint with a primary purpose of detecting and apprehending  
38 those individuals unlawfully present in the United States. In the instant case,

1 the primary purpose of the checkpoint on April 10, 2017, was for general law  
2 enforcement purposes.

3  
4 Violations of Fourth and Fourteenth Amendment Rights pursuant to *City*  
5 *of Indianapolis v. Edmond*, 531 U.S. 32 (2000). Plaintiff was unlawfully seized  
6 and detained by Deputy Roher at a federal checkpoint, and then pursued by  
7 Deputy Roher after being instructed to leave the checkpoint with no  
8 particularized suspicion to believe Plaintiff's vehicle contained illegal aliens.  
9 Deputy Roher restrained the liberty of Plaintiff without particularized suspicion  
10 at a location that the Fourth Amendment authorized be done only by federal  
11 law enforcement agents for a limited immigration-related purpose. Deputy  
12 Roher lacked the legal authority to participate in federal immigration  
13 checkpoint operations or investigate possible violations of federal immigration  
14 law.

15  
16 Arrest absent probable cause pursuant to the Fourth and Fourteenth  
17 Amendments and 42 U.S.C. § 1983. Plaintiff was asked to answer  
18 investigatory questions from federal agents or move his vehicle to secondary  
19 inspection at the federal checkpoint by Deputy Roher without possessing legal  
20 authority to participate in federal immigration checkpoint operations, without  
21 possessing particularized suspicion that his vehicle contained aliens unlawfully  
22 present in the United States, and without particularized suspicion that Plaintiff  
23 committed any state or federal crime for which Deputy Roher had legal  
24 authority to arrest. Deputy Roher arrested Plaintiff for allegedly violating  
25 A.R.S. § 13-2906 (obstructing a highway or other public thoroughfare), despite  
26 having no probable cause to do so and despite the presence of a state-issued  
27 encroachment permit creating a legal privilege under A.R.S. § 2906. Deputy  
28 Roher should have been aware of the legal privilege contained with A.R.S. §  
29 2906.

30  
31 Violations of 42 U.S.C. § 1983, pursuant to *Monell* as against Defendant  
32 Napier whose actions amounted to deliberate indifference of Plaintiff's  
33 constitutional rights.

34  
35 Violations of 42 U.S.C. § 1983 as to a failure to train Pima County  
36 Sheriff's Deputies by Defendants Napier, Dupnik, Nanos, Kunze, and  
37 Defendant Pima County Board of Supervisors as well as a failure to supervise.  
38 All disregarded the known or obvious consequences that a particular training  
39 deficiency would cause subordinates to violate Plaintiff's constitutional rights,  
40 and did just that. Defendants engaged in conduct that showed a reckless

1 disregard to the deprivations by the subordinates of the rights of people such as  
2 Plaintiff.

3  
4 False imprisonment as against Deputy Roher and Sergeant Kunze. *See*  
5 *Hart v. Raynor*, 190 Ariz. 272, 281, 947 P.2d 846, 855 (App. 1997).  
6 “Any restraint, however slight, upon another’s liberty to come and go as one  
7 pleases, constitutes an arrest.” *See Boies v. Raynor*, 89 Ariz. 257, 259, 361 P.2d  
8 1, 2 (1961), quoting *Swetman v. F.W. Woolworth Co.*, 83 Ariz. 189, 192, 318  
9 P.2d 364, 366 (1957).

10  
11 Defendants: Defendants believe the following issues are in dispute and that  
12 some or all may be resolved by a dispositive motion:

- 13
- 14 • Whether any defendant violated Plaintiff’s civil rights.
  - 15 • Whether the individually-named Defendants are entitled to qualified  
16 immunity.
  - 17 • Whether Deputy Roher lacked probable cause and/or reasonable  
18 suspicion.
  - 19 • Whether Deputy Roher violated Plaintiff’s First Amendment rights.
  - 20 • Whether Deputy Roher violated Plaintiff’s Fourth Amendment rights.
  - 21 • Whether Deputy Roher violated Plaintiff’s Fourteenth Amendment  
22 rights.
  - 23 • Whether Deputy Roher committed the state-law claim of false  
24 imprisonment.
  - 25 • Whether Sergeant Kunze ratified any unconstitutional conduct by  
26 Deputy Roher.
  - 27 • Whether Plaintiff has standing to pursue injunctive relief.
  - 28 • Whether Plaintiff’s claim for injunctive relief is moot.
  - 29 • Whether Sheriff Napier has an unconstitutional practice, policy, or  
30 custom under *Monell*.
  - 31 • Whether Plaintiff has stated a viable claim against former Sheriffs  
32 Dupnik and Nanos.
  - 33 • Whether any claim are barred by the statute of limitations.
  - 34 • Whether Plaintiff has a viable failure to train claim under § 1983.
  - 35 • The nature and extent of Plaintiff’s damages, if any.
  - 36 • The percentage of comparative fault of Plaintiff with respect to his state-  
37 law claim.
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**4. Jurisdictional basis of the case, citing specific statutes:**

Subject matter jurisdiction is proper pursuant to 28 U.S.C. §§ 1331, 1343, and 1346, 42 U.S.C. § 1983, and the United States Constitution. Supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367. This Court has authority to award injunctive and declaratory relief pursuant to 18 U.S.C. §§ 1343, 2201, and 2202. This Court has the authority to award reasonable attorney fees to the prevailing party pursuant to 42 U.S.C. § 1988(b).

**5. Parties, if any, who have not been served or any joinder or additional parties:**

All parties listed in the First Amended Complaint have been properly served.

Defendants note that Plaintiff’s FAC also complains and references conduct by the Border Patrol—the Border Patrol was listed as a defendant in the initial complaint. Pima County has concerns about whether Plaintiff will seek to make Border Patrol a party in this action at a later date.

**6. Names of parties not subject to the Court’s jurisdiction:**

There are no parties who are not subject to the Court’s jurisdiction.

**7. Whether there are dispositive or partially dispositive issues to be decided by pre-trial motions:**

Plaintiff may file a dispositive or partially dispositive motion if necessary.

Defendants anticipate filing a dispositive or partially dispositive motion on some or all issues.

**8. Whether the case is suitable for reference to arbitration, to a master, or to a magistrate for trial:**

Plaintiff believes this matter would be more appropriate for a settlement conference.

1 Defendants do not object to a magistrate for trial.  
2

3 **9. The status of related cases pending before other judges of this**  
4 **court or before other courts:**

5  
6 Plaintiff: N/A

7  
8 Defendants: N/A  
9

10 **10. Parties' responses to MIDP discovery requests:**

11  
12 The parties exchanged MIDP Disclosures and documents on or about  
13 September 28, 2018.

14  
15 **11. Proposed deadlines:**

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17 a. Discovery, including supplementation of MIDP responses:

18  
19 Plaintiff: Due to Counsel's trial schedule, no sooner than January 15,  
20 2019.

21  
22 Defendants: Anticipate needing a full 6 months for discovery and  
23 disclosure from the date of this document—that would put this date at the end  
24 of March 2019. Defendants further note the allegations in the complaint  
25 regarding the conduct of the Border Patrol and the fact they were listed as  
26 defendants in the initial complaint. If any additional defendants will be added  
27 to this action, those additions will necessarily complicate and extend the  
28 discovery period beyond the 6 month period.

29  
30 b. Dispositive motions:

31  
32 Plaintiff agrees with Defendant that it will be the end of May 2019 or  
33 possibly into June 2019 before any dispositive motions are filed.

34  
35 Defendant: The end of May 2019.

36  
37 c. Proposed pre-trial order statement:

38  
39 Plaintiff: Due to Counsel's trial schedule, no sooner than June 14,  
40 2019.



1  
2 Defendants: Within 30 days after the Court rules on any dispositive  
3 motions.

4  
5 **12. Estimated date for trial and estimated length of trial:**  
6

7 Plaintiff: Due to Plaintiff's Counsel's current trial schedule, it is not  
8 anticipated that trial in this matter can occur until June 2019. Estimated time  
9 for trial will be four (4) days.

10  
11 Defendants: Agree with Plaintiff's position.  
12

13 **13. Whether a jury trial has been requested:**  
14

15 Plaintiff has requested a jury trial.  
16

17 **14. Prospects of settlement, including desire to have settlement**  
18 **conference with another judge or magistrate, and how settlement efforts**  
19 **can be assisted:**

20  
21 Plaintiff believes a settlement conference may be successful.  
22

23 Defendants agree that, at some juncture, a settlement conference with a  
24 magistrate judge may be appropriate.  
25

26 **15. Class action:**  
27

28 N/A  
29

30 **16. Unusual, difficult, or complex problems affecting the conduct**  
31 **of the case. If the parties believe discovery will require more than six (6)**  
32 **months, counsel MUST provide an explanation as to why it is necessary**  
33 **and essential:**  
34

35 Plaintiff may wish to take the depositions of Defendants Roher, Kunze,  
36 Napier, and a representative of the Pima County Board of Supervisors. The  
37 availability of Defendants will determine whether more than six (6) months will  
38 be required to complete this phase of discovery.  
39

1 Defendants again note the numerous allegations in the complaint  
2 regarding the conduct of the Border Patrol and the fact they were listed as  
3 defendants in the initial complaint. If any additional defendants will be added  
4 to this action, those additions will necessarily complicate and extend the  
5 discovery period.

6  
7 **17. Other matters counsel feel will aid the Court in expediting the**  
8 **disposition of this matter efficiently.**

9  
10 None.

11  
12 Dated this 6<sup>th</sup> day of November 2018.

13  
14 Ralph E. Ellinwood,  
15 Attorney at Law, PLLC

BARBARA LAWALL  
Pima County Attorney

16  
17  
18 /s/ Ralph E. Ellinwood  
19 Ralph E. Ellinwood  
20 Attorney for Plaintiff

/s/ Nancy J. Davis  
By: Nancy J. Davis  
Deputy County Attorney  
Attorney for Defendants

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