

EXHIBIT A
PROPOSED
SECOND AMENDED
COMPLAINT

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

Terrence Bressi,

Plaintiff,

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

PROPOSED SECOND AMENDED
COMPLAINT

vs.

- (1) Pima County Sheriff Mark Napier, in his individual and official capacities;
- (2) Pima County Board of Supervisors;
- (3) Former Pima County Sheriff Christopher Nanos, in his individual capacity;
- (4) Pima County Deputy Sheriff Ryan Roher, in his individual capacity;
- (5) Pima County Deputy Sheriff Brian Kunze, in his individual capacity;
- (6) United States Department of Homeland Security;
- (7) United States Customs & Border Protection;
- (8) United States Office of Border Patrol;

(9) Kirstjen Nielsen, Secretary,
United States Department of
Homeland Security, in her official
capacity;

(10) Kevin K. McAleenan,
Commissioner, United States
Customs & Border Protection, in his
official capacity;

(11) Carla L. Provost, Chief,
United States Border Patrol, in her
official capacity;

(12) Rodolfo Karisch, Chief Patrol
Agent-Tucson Sector, in his official
capacity;

(13) United States of America,

Defendants.

1
2 Plaintiff amends his ~~Verified~~First Amended 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,(b), 42 U.S.C. § 1983, and the
7 United States Constitution.

8 2. This Court has jurisdiction over the claims brought against the
9 United States of America pursuant to 28 U.S.C. § 1346(b), as Plaintiff timely
10 filed a notice of claim properly served upon the federal government. On
11 September 20, 2018, by letter, the federal government denied Plaintiff's claim
12 in full. Plaintiff is timely filing this action following the September 20, 2018
13 denial.

1 Sheriff's Department ("PCSD"). These Defendants are hereafter referred to
2 collectively as the "~~individual county~~Individual County Defendants."

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

4 10. Defendant Napier was the Sheriff of Pima County on April 10,
5 2017.

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

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

10 13. Pursuant to *Monell v. Department of Social Services*, 436 U.S.
11 658 (1978), Sheriff Napier is a final policymaker of Pima County in the area
12 of law enforcement.

13 14. ~~At all times relevant herein~~From January 2017 to the present
14 time, Defendant Napier acted under color of state law.

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

17 16. Defendant Christopher Nanos served as the Sheriff of Pima
18 County from August ~~1, 2015~~, through ~~January 1, 2017~~December 31, 2016.

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

1 18. During his tenure as Sheriff, Defendant Nanos acted under color
2 of state law in relation to ~~his training and supervision of sworn officers~~
3 ~~employed by PCSD~~ the acts and omissions alleged in this action.

4 19. During his tenure as Sheriff, Defendant Nanos was responsible
5 for ensuring proper training and supervision of the Sheriff's deputies
6 employed by PCSD, including proper training and supervision related to the
7 performance of their law enforcement duties at interior checkpoints.

8 ~~19.20.~~ Defendant Nanos is being sued in his individual capacity.

9 ~~6. Defendant Clarence Dupnik served as Sheriff of Pima County~~
10 ~~from February 1980 through August 1, 2015.~~

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

13 ~~8. During his tenure as Sheriff, Defendant Dupnik acted under color~~
14 ~~of state law in relation to his training and supervision of sworn officers~~
15 ~~employed by PCSD.~~

16 ~~9. Defendant Dupnik is being sued in his individual capacity.~~

17 ~~20.21.~~ At all relevant times herein, the ~~individual county~~ Individual
18 County Defendants were all sworn peace officers who were certified by
19 Arizona Peace Officer Standards & Training Board ("POST"), a nonprofit
20 entity that was chartered by the Arizona Legislature, receives annual state

1 appropriations, and retains exclusive authority to certify Arizona peace
2 officers.

3 ~~21.22.~~ At all relevant times herein, the ~~individual county~~Individual
4 County Defendants were employed by PCSO as sworn peace officers.

5 ~~22.23.~~ By virtue of their certification as peace officers by POST and
6 their employment by PCSO, the ~~individual county~~Individual County
7 Defendants had the authority from the state of Arizona to enforce Arizona
8 state criminal statutes.

9 ~~23.24.~~ At all times relevant herein, pursuant to A.R.S. § 13-3883, the
10 ~~individual county~~Individual County Defendants were clothed with state
11 authority to effectuate warrantless arrests for misdemeanor and felony crimes
12 where probable cause exists to believe the person arrested committed such
13 crime.

14 ~~24.25.~~ At all relevant times herein, the ~~individual county~~Individual
15 County Defendants acted under color of state law.

16 ~~25.26.~~ Defendant Pima County Board of Supervisors is the legislative
17 body of Pima County, Arizona.

18 ~~26.27.~~ Pursuant to A.R.S. § 11-251, the Pima County Board of
19 Supervisors is ~~responsible~~vested with authority to “supervise the official
20 conduct of all county officers,” including that of the Sheriff.

1 27.28. Pursuant to A.R.S. § 11-444, the Pima County Board of
2 Supervisors has the authority to limit certain line items of Sheriff funding for
3 those expenses determined to cause illegal or unwarranted activities.

4 28.29. Pursuant to A.R.S. § 11-201, the Pima County Board of
5 Supervisors is responsible for setting the budget of all elected county officers,
6 including that of the Sheriff.

7 29.30. Overall, the Pima County Board of Supervisors has several tools
8 available to it to prospectively redress ongoing constitutional violations
9 caused by the acts or omissions of the Sheriff.

10 30.31. The Pima County Board of Supervisors has the authority to
11 accept, reject, and condition federal grants offered to elected county officers,
12 including grants offered to the Sheriff.

13 31.32. Among the federal grants over which the Pima County Board of
14 Supervisors has authority to accept, reject, and condition is a federal grant
15 program referred to as “Operation Stonegarden,” (also sometimes referred to
16 as “OPSG”) which is central to Plaintiff’s constitutional deprivation at issue
17 in this action.

18 33. At various times relevant to this action, individual county
19 Defendants were supervised by employees of U.S. Defendant United States

1 Border Patrol, pursuant to the terms of the federal Operation Stonegarden
2 grant extended to Pima County Sheriff's described in more detail below.

3 34. Defendant Department of Homeland Security ("DHS") is a
4 Cabinet-level department that is responsible for the coordination and
5 unification of national security efforts. Defendant DHS consists of several
6 agencies, including United States Customs & Border Protection and United
7 States Border Patrol. DHS has authority over policies, procedures, and
8 practices relating to the operation of U.S. Border Patrol interior vehicle
9 checkpoints. Defendant DHS is sued as it relates to claims for declaratory and
10 prospective injunctive relief.

11 35. Defendant United States Customs & Border Protection ("CBP")
12 is an agency within DHS. Defendant CBP has authority over policies,
13 procedures, and practices relating to the operation of Border Patrol interior
14 vehicle checkpoints. Defendant CBP is sued as it relates to claims for
15 declaratory and prospective injunctive relief.

16 36. Defendant Office of Border Patrol ("Border Patrol") is a sub-
17 agency within CBP. Border Patrol is a federal law enforcement agency
18 responsible for the enforcement of federal immigration laws. Border Patrol
19 has responsibility for and oversight over policies, procedures, and practices
20 relating to the operation of Border Patrol interior vehicle checkpoints.

1 Defendant Border Patrol is sued as it relates to claims for declaratory and
2 prospective injunctive relief.

3 37. Defendant Kirstjen Nielsen is the Secretary of Homeland
4 Security, vested with all functions of all officers, employees, and
5 organizational units of DHS. Defendant Nielsen has authority over all DHS
6 policies, procedures, and practices relating to Border Patrol interior
7 checkpoint operations. Defendant Nielson is sued in her official capacity as it
8 relates to claims for declaratory and prospective injunctive relief.

9 38. Defendant Kevin K. McAleenan is Commissioner of CBP. In
10 that capacity, Defendant McAleenan has authority over all CBP policies,
11 procedures, and practices relating to Border Patrol interior checkpoint
12 operations. Defendant McAleenan is sued in his official capacity as it relates
13 to claims for declaratory and prospective injunctive relief.

14 39. Defendant Carla L. Provost is Chief of the Border Patrol. In that
15 capacity, Defendant Provost has direct responsibility for and oversight over
16 Border Patrol policies, procedures, and practices relating to Border Patrol
17 interior checkpoint operations. Defendant Provost is sued in her official
18 capacity as it relates to claims for declaratory and prospective injunctive
19 relief.

1 40. Defendant Rodolfo Karisch is the Chief Patrol Agent for the
2 Tucson Sector of the Border Patrol. In that capacity, Defendant Karisch has
3 direct responsibility for and oversight over the Tucson Sector Border Patrol
4 policies, procedures, and practices relating to Border Patrol interior
5 checkpoint operations in the Tucson Sector. Defendant Karisch is sued in his
6 official capacity as it relates to claims for declaratory and prospective
7 injunctive relief.

8 41. Defendants DHS, CBP, Border Patrol, Nielsen, McAleenan,
9 Provost, and Karisch are collectively referred to herein as the “Federal
10 Defendants”.

11 32.42. Defendant United States of America is sued for Plaintiff’s
12 personal injuries and harms caused by the negligent or wrongful acts or
13 omissions of its employees. Those employees were acting within the scope of
14 their office or employment with the federal government under circumstances
15 where the United States, if a private person, would be liable to Plaintiff in
16 accordance with the laws of the State of Arizona. See 28 U.S.C. § 1346(b).

17 **FACTUAL ALLEGATIONS**

18 Arizona State Route 86 Checkpoint

19 33.43. From 1993 to the present, Plaintiff has routinely traveled Arizona
20 State Route 86 (hereafter “SR-86”) in Pima County, in the District of Arizona.

1 [34.44.](#) SR-86 is an east-west state highway that does not intersect the
2 United States/Mexico border at any point.

3 [35.45.](#) At its nearest point in Sells, Arizona, SR-86 is approximately 21
4 air miles from the nearest point along the United States/Mexico border.

5 [36.46.](#) Between 2005 and 2007, ~~United States Customs~~ Defendants CBP
6 and Border ~~Protection (“U.S. Border Patrol”)~~ operated aan interior checkpoint
7 along SR-86 near milepost 145 in Pima County, at irregular times and on
8 irregular dates.

9 [37.47.](#) Between January 2008 and July 2010, U.S. Defendants CBP and
10 Border Patrol operated aan interior checkpoint near milepost 145 on SR-86 in
11 Pima County.

12 [38.48.](#) In August 2010, U.S. Defendants CBP and Border Patrol ~~moved~~
13 itsbegan to operate a checkpoint at milepost ~~145 to milepost~~ 146.5 on SR-86
14 in Pima County ~~where it has been operated continuously thereafter.~~

15 49. The checkpoint described at Paragraph ~~44~~ 48 has operated
16 continuously at milepost 146.5 on SR-86 from 2010 to the present time.

17 [39.50.](#) The checkpoint described at Paragraph 48 is located in an
18 unincorporated portion of Pima County.

1 ~~40.51.~~ The checkpoint described in Paragraph ~~4148~~ is located
2 approximately 49 air miles from the nearest point along the United
3 States/Mexico border.

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

8 ~~52.~~ ~~Despite the U.S. Border Patrol’s public statements to the~~
9 ~~contrary, the SR-86 does not serve as the functional equivalent of the border.~~

10 ~~41.53.~~ The interior checkpoint described in Paragraph ~~4148~~ is operated
11 for the primary purpose of general crime control.

12 ~~42.54.~~ ~~The U.S. Defendant CBP’s and Defendant~~ Border Patrol’s
13 primary purpose ~~offor~~ operating the interior checkpoint described at
14 Paragraph ~~4148~~ is not to intercept unauthorized aliens.

15 ~~43.55.~~ The interior checkpoint described at Paragraph ~~4148~~ is not a
16 sobriety checkpoint.

17 ~~44.56.~~ The interior checkpoint described at Paragraph ~~4148~~ is not
18 conducted for the purpose of checking motorists’ drivers’ licenses.

1 57. The interior checkpoint described at Paragraph 48 is not located
2 at the entrance to a state or federal park and is not conducted for the purpose
3 of enforcing animal hunting or poaching laws.

4 45.58.The checkpoint described at Paragraph ~~4148~~ is not conducted for
5 the purpose of verifying that motorists possess automobile insurance.

6 46.59.The checkpoint described at Paragraph ~~4148~~ is not conducted for
7 the purpose of enforcing laws related to vehicle weight limits.

8 47.60.~~In particular, the~~The checkpoint described at Paragraph ~~4148~~ has
9 as its primary purpose the detection and interdiction of illegal narcotics.

10 48.61.During the six-month period from October 29, 2015, through
11 April 29, 2016, ~~the U.S. Border Patrol reports that~~ there were zero
12 immigration-related arrests at the SR-86 checkpoint. During the same time
13 period, there were six narcotic-related arrests at the SR-86 checkpoint.

14 49.62.During the six-month period from April 29, 2016, through
15 October 29, 2016, ~~the U.S. Border Patrol reports that~~ there were 14
16 immigration-related arrests at the SR-86 checkpoint. During the same time
17 period, there were 21 narcotics-related arrests at the SR-86 checkpoint.

18 ~~11. The SR-86 checkpoint is one of five U.S. Border Patrol~~
19 ~~checkpoints currently located in the unincorporated portions of Pima County.~~

1 ~~50.63.~~ Since commencing routine and regular federal checkpoint
2 operations in 2008, U.S. Defendant Border Patrol ~~have~~has applied for and
3 been granted state highway encroachment permits from the Arizona
4 Department of Transportation (“ADOT”).

5 ~~51.64.~~ Under ADOT regulations, permits are required to be renewed on
6 an annual basis.

7 ~~52.65. One~~ Prior to April 21, 2017, one of the terms of the encroachment
8 permit issued to U.S. Defendant Border Patrol for the SR-86 checkpoint ~~in~~
9 ~~Pima County~~ is that the checkpoint may ~~only~~ be operated only at irregular
10 times and on irregular dates.

11 66. On April 21, 2017, Defendant Border Patrol represented to the
12 State of Arizona that the activity to be performed at the SR-86 interior
13 checkpoint was to include the deterrence of narcotics smuggling.

14 67. On April 21, 2017, Defendant Border Patrol represented to the
15 State of Arizona that a license plate camera recognition system (“LPR”)
16 would operate at the SR-86 checkpoint.

17 68. At least one of the LPR systems revealed to the State of Arizona
18 in the April 2017 application is monitored by the United States Drug
19 Enforcement Agency (“DEA”).

1 ~~53.69.~~ According to an official website of the Department of Homeland
2 Security maintained at [https://www.cbp.gov/border-security/along-us-borders/
3 overview](https://www.cbp.gov/border-security/along-us-borders/overview), the purpose of ~~the United States Customs and Border
4 Protection~~ interior checkpoints ~~set up inside the United States~~ is to: “(1) detect
5 and apprehend illegal aliens attempting to travel further into the interior of the
6 United States after evading detection at the border; and (2) to detect illegal
7 narcotics.”

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

14 Plaintiff’s Interactions at the SR-86 Checkpoint

15 ~~70.~~ Between 2005 and February 2018, Plaintiff has passed through
16 the SR-86 ~~roadblock~~ checkpoint approximately 419 times.

17 ~~54.71.~~ Between March 2011 and February 2018, Plaintiff has passed by
18 the LPR system described in Paragraph 67 approximately 294 times.

19 ~~55.72.~~ At all times relevant herein, Plaintiff was driving his personal
20 vehicle.

1 ~~56.73.~~ Plaintiff's personal vehicle was widely known to and recognized
2 by individual County and Federal Defendants as belonging to Plaintiff.

3 ~~57.74.~~ ~~Plaintiff is a United States citizen, a fact known to Defendant~~
4 ~~Roher and other county deputies at~~ At all times relevant herein, Defendant
5 Roher was aware that Plaintiff is a U.S. citizen.

6 75. At all times relevant herein, employees of the Federal Defendants
7 were aware that Plaintiff is a U.S. citizen.

8 ~~58.76.~~ Plaintiff always traveled alone through the SR-86 checkpoint, a
9 fact of which employees of the U.S. Border Patrol was Federal Defendants
10 were aware. This action was predictable to ~~U.S. Border Patrol and~~ the Federal
11 Defendants. As such, Plaintiff's presence traveling through the SR-86
12 checkpoint raised absolutely no suspicion of ~~human smuggling criminal~~
13 wrongdoing under federal laws.

14 ~~59.77.~~ Employees of ~~U.S. Border Patrol~~ the Federal Defendants have
15 routinely seized Plaintiff at the SR-86 checkpoint, despite knowing Plaintiff's
16 identity and citizenship and despite an absence of reasonable suspicion or
17 probable cause of criminal wrongdoing under federal laws.

18 ~~60.78.~~ U.S. Defendant Border Patrol routinely uses law enforcement K-9
19 units at the SR-86 checkpoint.

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

4 ~~61.79.~~ On occasion, PCSD ~~offers the~~ allows Defendant Border Patrol to
5 use ~~of~~ PCSD K-9 units ~~to U.S. Border Patrol.~~

6 ~~62.80.~~ The U.S. Defendant Border Patrol trains its K-9 units to detect
7 for the scent of ~~humans, cash, and~~ more than one type of illegal narcotic.

8 ~~63.81.~~ At all times relevant herein, Defendants Napier, ~~Dupnik,~~ Nanos,
9 Roher, and Kunze were personally aware that U.S. K-9 units operated by
10 Defendant Border Patrol ~~K-9 units operating~~ at the SR-86 checkpoint were
11 trained for and capable of detecting the scent of narcotics.

12 ~~64.82.~~ On two occasions, ~~U.S.~~ prior to April 10, 2017, Defendant
13 Border Patrol placed dogs in the bed of Plaintiff's pickup truck without lawful
14 excuse, and without Plaintiff's consent.

15 ~~65.83.~~ On several occasions, U.S. Defendant Border Patrol ~~have~~ has
16 detained Plaintiff at the SR-86 checkpoint for the exclusive purpose of
17 conducting a K-9 drug-detection sniff around Plaintiff's vehicle.

18 ~~66.84.~~ Since April 10, 2017, Plaintiff has traveled through the SR-86
19 checkpoint on multiple occasions and intends to continue traveling through
20 the SR-86 checkpoint on a regular basis in the future.

1 85. Since April 10, 2017, Plaintiff continues to be subject to
2 unlawful suspicionless seizures on a regular basis at the SR-86 checkpoint.
3 Since April 10, 2017, the Federal Defendants have chilled Plaintiff's First
4 Amendment speech while traveling through the SR-86 checkpoint.

5 Operation Stonegarden in Pima County

6 67.86. Since at least 2012, U.S. Border Patrol have conducted joint
7 operations with PCSD under a federal grant program known as “Operation
8 Stonegarden.”

9 68.87. The stated purpose of Operation Stonegarden is to conduct “zero
10 tolerance” traffic contacts in certain portions of Pima County determined by
11 the U.S. Border Patrol to be areas of particular concern. This is sometimes
12 referred to as “saturation” within the law enforcement community, as the
13 purpose is to “saturate” a given geographic area with intensive traffic
14 enforcement during a given time period.

15 69.88. Operation Stonegarden is a federal grant program that pays
16 state, county, and local law enforcement agencies situated close to an
17 international border to work closely with the U.S. Border Patrol on federal
18 border security missions.

19 70.89. Operation Stonegarden provides federal grant dollars to local law
20 enforcement agencies, in part, to subsidize overtime wages of local law

1 enforcement officers who volunteer to work in excess of 40 hours per week
2 conducting joint missions with U.S. Border Patrol.

3 [71.90](#). The Operation Stonegarden grant program does not confer any
4 federal immigration enforcement authority on state, county or local law
5 enforcement participants.

6 [72.91](#). Neither Pima County nor PCSD has a joint memorandum of
7 agreement with the federal government under the program known as
8 “287(g)”, codified at 8 U.S.C. § 1357(g).

9 [73.92](#). Nothing in federal law confers upon PCSD deputies the authority
10 to detain a motorist for the exclusive purpose of investigating potential civil
11 violations of federal immigration law.

12 [74.93](#). Under the terms of Operation Stonegarden, PCSD must
13 coordinate its deployments with the U.S. Border Patrol.

14 [75.94](#). Under the terms of Operation Stonegarden, the U.S. Border
15 Patrol retains authority to direct PCSD Deputies to certain locations, during
16 certain times, and with specific objectives determined by the Tucson Sector of
17 the U.S. Border Patrol.

18 [76.95](#). During all times relevant herein, commanders employed by ~~the~~
19 ~~U.S. Defendant~~ Border Patrol routinely assigned PCSD deputies to the SR-86
20 checkpoint during Operation Stonegarden work shifts.

1 77.96. During all times relevant herein, during the times when PCSD
2 deputies were assigned by U.S. Defendant Border Patrol ~~commanders~~ to the
3 SR-86 checkpoint, such deputies frequently would park their PCSD patrol
4 vehicle on the shoulder of SR-86 alongside official U.S. Border Patrol
5 vehicles.

6 78.97. During all times relevant herein, U.S. employees of Defendant
7 Border Patrol ~~agents~~ routinely allowed PCSD deputies to operate at the SR-86
8 checkpoint regardless of whether or not the deputies had been explicitly
9 assigned there as part of the Operation Stonegarden grant program.

10 79.98. During all times relevant herein, U.S. employees of Defendant
11 Border Patrol ~~agents~~ who are assigned to work at the SR-86 checkpoint have
12 allowed and encouraged PCSD deputies to engage in general law enforcement
13 operations at the SR-86 checkpoint.

14 80.99. During all times relevant herein, PCSD deputies routinely had
15 contacts with motorists who were temporarily seized at the SR-86 checkpoint.

16 81.100. _____ During all times relevant herein, PCSD deputies routinely
17 issued state law traffic citations to motorists while they were temporarily
18 seized at the SR-86 checkpoint.

19 82.101. _____ During all times relevant herein, PCSD deputies routinely
20 issued state law traffic citations at the SR-86 checkpoint to motorists who had

1 already been determined by U.S. Border Patrol agents to possess lawful
2 immigration status.

3 83.102. Prior to April 10, 2017, Defendant Roher routinely issued
4 state law traffic citations at the SR-86 checkpoint to motorists who had
5 already been determined by U.S. Border Patrol agents to possess lawful
6 immigration status.

7 84.103. Prior to April 10, 2017, Defendants Napier, Nanos,
8 ~~Dupnik~~, and Kunze were personally aware that PCSD routinely issued state
9 law traffic citations at the SR-86 checkpoint to motorists who had already
10 been determined by U.S. Border Patrol agents to possess lawful immigration
11 status.

12 85.104. When assigned to the SR-86 checkpoint, a PCSD Deputy
13 routinely issues, on average, a larger number of state law traffic citations
14 during an 8-hour shift than he/she issues when patrolling for the same amount
15 of time on portions of the open highways ~~that are unobstructed by a~~
16 ~~checkpoint.~~

17 86.105. During one 8-hour work shift while assigned to the SR-86
18 checkpoint, Defendant Roher issued state law traffic citations to
19 approximately thirty (30) different motorists who passed through the SR-86
20 checkpoint ~~during those 8 hours.~~

1 87.106. Most, if not all, of those motorists on that particular day
2 had been determined by U.S. Border Patrol agents located at the SR-86
3 checkpoint to possess lawful immigration status prior to Defendant Roher's
4 contact with those motorists.

5 88.107. For example, on April 10, 2017, (the same day on which
6 Defendant's underlying constitutional deprivations occurred) Defendant
7 Roher observed that a vehicle in line at the SR-86 checkpoint had a long crack
8 in its windshield, which is a vehicle equipment violation under Arizona state
9 law.

10 89.108. As the vehicle entered the primary lane of the SR-86
11 checkpoint, Defendant Roher asked the U.S. Border Patrol agent to refer the
12 vehicle to the secondary lane within the Border Patrol checkpoint area.

13 90.109. Once in the secondary lane, Defendant Roher found that
14 the driver's license had been suspended and proceeded to issue a state law
15 citation to the driver and have the vehicle towed.

16 91.110. Defendants Roher and Kunze were both earning overtime
17 wages on April 10, 2017, pursuant to PCSD's participation in the Operation
18 Stonegarden program.

1 92.111. On at least two occasions since 2013, U.S. Border Patrol
2 agents have called PCSD deputies to the SR-86 checkpoint while detaining
3 Plaintiff at the checkpoint's primary stop location.

4 93.112. The PCSD deputies called to the scene on these occasions
5 were conducting Operation Stonegarden deployments in collaboration with
6 the U.S. Border Patrol.

7 94.113. Defendant Pima County Board of Supervisors ~~mustis~~
8 ~~authorized to~~ approve each Operation Stonegarden grant award.

9 ~~95.7. On May 16, 2017, Defendant Pima County Board of Supervisors~~
10 ~~approved the receipt of Operation Stonegarden funding to be distributed to~~
11 ~~PCSD. They approved such funding without qualification or conditions.~~

12 96.114. On February 16, 2016, Defendant Pima County Board of
13 Supervisors approved the receipt of Operation Stonegarden funding to be
14 distributed to PCSD. They approved such funding without qualification or
15 conditions.

16 115. On May 16, 2017, Defendant Pima County Board of Supervisors

17 approved the receipt of Operation Stonegarden funding to be distributed to

18 PCSD. They approved such funding without qualification or conditions.

1 97.116. On February 20, 2018, Defendant Pima County Board of
2 Supervisors voted to approve the receipt of \$1,429,175 of Operation
3 Stonegarden funding contingent upon several specific conditions.

4 98.117. Upon information and belief, since February 20, 2018, no
5 one has challenged Defendant Pima County Board of Supervisors' legal
6 authority to approve such federal grant money on a conditional basis.

7 Training and Supervision of Pima County Sheriff's Deputies

8 99.118. At all times relevant herein, PCSD did not have internal
9 regulations, rules, guidelines, directives, written guidance, or protocols
10 pertaining to Operation Stonegarden deployments.

11 ~~100.119.~~ At all times relevant herein, PCSD did not have internal
12 regulations, rules, guidelines, directives, written guidance, or protocols
13 pertaining to deputies who ~~station~~stationed themselves at a U.S. Border Patrol
14 checkpoint.

15 ~~101.120.~~ At all times relevant herein, PCSD did not offer Operation
16 Stonegarden training to its deputies.

17 ~~102.121.~~ Upon information and belief, PCSD used none of the
18 federal Operation Stonegarden grant funding it received in 2016 and 2017
19 ~~(described at Paragraphs 102 and 103)~~ to develop or disseminate specialized

1 training to those of its sworn deputies participating in Operation Stonegarden
2 deployments.

3 ~~103.122.~~ With the exception of issues related to deployments at
4 international ports of entry, at all times relevant herein, the U.S. Border Patrol
5 did not share with PCSD any training materials related to the proper execution
6 of Operation Stonegarden deployments.

7 ~~104.123.~~ At all times relevant herein, the U.S. Border Patrol did not
8 share with PCSD any training materials related to proper law enforcement
9 functions at Border Patrol checkpoints.

10 ~~105.124.~~ Upon information and belief, at all times relevant herein,
11 PCSD did not disseminate to any of its deputies any training materials related
12 to the U.S. Supreme Court's decision in *Martinez-Fuerte v. United States*, 428
13 U.S. 543 (1976).

14 ~~106.125.~~ Upon information and belief, at all times relevant herein,
15 PCSD did not disseminate to any of its deputies any training materials related
16 to the U.S. Supreme Court's decision in *City of Indianapolis v. Edmond*, 531
17 U.S. 32 (2000).

18 ~~107.126.~~ At all times relevant herein, PCSD deputies routinely
19 participated in Operation Stonegarden deployments at the SR-86 checkpoint
20 without having received training specific to Border Patrol checkpoints.

1 ~~108.127.~~ At all times relevant herein, Defendant Roher did not
2 receive training specific to Border Patrol checkpoints.

3 ~~109.128.~~ At all times relevant herein, with the exception of
4 deployments taking place at international ports of entry, PCSD permitted its
5 deputies to conduct Operation Stonegarden deployments without undergoing
6 special or additional training.

7 ~~14.— Defendant Dupnik took no steps during his tenure to develop or
8 disseminate training materials related to Operation Stonegarden.~~

9 ~~15.— Defendant Dupnik took no steps during his tenure to develop or
10 promulgate internal rules, regulations, guidelines, guidance, protocols or
11 directives related to Operation Stonegarden.~~

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

16 ~~110.129.~~ Defendant Nanos took no steps during his tenure to
17 develop or promulgate internal rules, regulations, guidelines, guidance,
18 protocols or directives related to Operation Stonegarden.

19 ~~111.130.~~ Defendant ~~former Sheriff~~ Nanos took no steps during his
20 tenure to develop or promulgate internal rules, regulations, guidelines,

1 guidance, protocols or directives related to PCSD duties while stationed at
2 Border Patrol checkpoints.

3 ~~112.131.~~ ~~At all times relevant herein~~ Prior to 2018, Defendant
4 Napier took no steps to develop or disseminate training materials related to
5 Operation Stonegarden.

6 ~~113.132.~~ ~~At all times relevant herein~~ Prior to 2018, Defendant
7 Napier took no steps to develop or disseminate training materials related to
8 PCSD duties while stationed at Border Patrol checkpoints.

9 ~~114.133.~~ ~~At all times relevant herein~~ Prior to 2018, Defendant
10 Napier took no steps to develop internal policies, rules, regulations, protocols,
11 guidelines, guidance, protocols or directives related to Operation Stonegarden.

12 ~~115.134.~~ ~~At all times relevant herein~~ Prior to 2018, Defendant
13 Napier took no steps to develop internal policies, rules, regulations, protocols,
14 guidelines, protocols or directives related to PCSD duties while stationed at
15 Border Patrol checkpoints.

16 ~~116.135.~~ PCSD maintains a document issued to ~~every deputy~~
17 ~~employed by PCSD~~ some of its employees called the “Pima County Sheriff’s
18 Department Rules and Regulations Manual.” The current document is
19 available at: <https://www.pimasheriff.org/about-us/rules-and-regulations/>.

1 ~~117.136.~~ The document described in Paragraph ~~126135~~ is designed
2 to guide members of the Pima County Sheriff’s Department in carrying out
3 the duties, responsibilities, and obligations set forth by law, or assumed by
4 them, in order to fulfill the mission of the Department.

5 ~~118.137.~~ Upon information and belief, PCSD, under the direction of
6 the Sheriff, undertakes an annual review of the document described in
7 Paragraph ~~126135~~ to ensure that the document reflects the latest
8 developments in the law.

9 ~~119.138.~~ ~~The~~ As of December 31, 2018, the current version of the
10 document described in Paragraph ~~126135~~ consists of ~~419~~ approximately 400
11 pages, ~~not including the preface, index, and table of contents.~~

12 ~~120.139.~~ On April 10, 2017, the then-operative version of the
13 document described in Paragraph ~~126135~~ provided instructions and guidance
14 related to the proper operation of a sobriety checkpoint.

15 ~~121.140.~~ Pursuant to the document described in Paragraph ~~126135~~,
16 PCSD deputies who participate in sobriety checkpoints are required to attend
17 an “operation specific briefing” prior to their participation in said checkpoint.

18 ~~122.141.~~ PCSD requires no “operation specific briefing” of PCSD
19 deputies planning to participate in Operation Stonegarden deployments at
20 Border Patrol checkpoints.

1 ~~123.142.~~ On April 10, 2017, the then-operative version of the
2 document described in Paragraph ~~126135~~ nowhere mentioned Border Patrol
3 checkpoints.

4 ~~124.143.~~ On April 10, 2017, the then-operative version of the
5 document described in Paragraph ~~126135~~ nowhere mentioned Operation
6 Stonegarden.

7 ~~125.144.~~ Upon information and belief, between 2008 and 2017,
8 neither Defendant ~~Dupnik, Defendant~~ Nanos, nor Defendant Napier
9 undertook or directed their subordinates to undertake any review of the
10 document described in Paragraph ~~126135~~ for the purpose of ensuring that
11 PCSD operations at Border Patrol checkpoints were consistent with current
12 law.

13 ~~126.145.~~ 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 ~~127.146.~~ Upon information and belief, during all times relevant
19 herein, Defendants ~~Dupnik,~~ Nanos, and Napier were personally aware that

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

3 128-147. Upon information and belief, prior to Plaintiff's arrest on
4 April 10, 2017, subordinates of Defendant Napier, including at least one of
5 the Chiefs of PCSD, were personally familiar with Plaintiff and were
6 personally familiar with his interactions with PCSD deputies at the SR-86
7 checkpoint.

8 April 10, 2017 Incident at SR-86 Checkpoint

9 129-148. On three occasions since 2013, Plaintiff was cited under
10 state law at the SR-86 checkpoint by PCSD Deputies who were working in
11 collaboration with ~~the U.S. Defendant~~ Border Patrol ~~under~~pursuant to the
12 terms of Operation Stonegarden.

13 130-149. The most recent of those occasions was on April 10, 2017,
14 the subject of this lawsuit.

15 131-150. On April 10, 2017, Plaintiff was traveling eastbound on
16 SR-86 and came upon the ~~Border Patrol~~SR-86 interior checkpoint ~~described~~
17 ~~herein at Paragraph 41.~~

18 132-151. Plaintiff slowed down and brought his vehicle to a
19 complete stop, as indicated by the traffic signs: maintained by Defendant
20 Border Patrol.

1 ~~133-152.~~ Plaintiff lowered his window slightly to enable himself to
2 hear the instructions from the Border Patrol agent on duty at the checkpoint.

3 ~~134-153.~~ Agent Frye, an employee of ~~the U.S. Defendant~~ Border
4 Patrol, asked Plaintiff to declare whether or not Plaintiff is a U.S. citizen.

5 ~~135-154.~~ In exercising his First Amendment right not to speak,
6 Plaintiff declined to declare his citizenship status.

7 155. Plaintiff's choice not to speak was a deliberate choice not to
8 express an ideological viewpoint with which Plaintiff disagrees. In particular,
9 Plaintiff's decision not to speak to Agent Frye was a decision to not
10 acknowledge or bear witness to a government activity with which Plaintiff
11 disagrees – the maintenance and operation of unlawful interior checkpoints.
12 In short, Plaintiff's silence was a pointed expression of anguish about the
13 current domestic affairs of his government.

14 ~~136-156.~~ As a direct result of Plaintiff's choice not to declare his
15 citizenship status, Agent Frye indicated to Plaintiff that Plaintiff was not free
16 to leave and was not free to proceed down the highway.

17 ~~137-157.~~ Accordingly, Plaintiff remained seated in the
18 ~~driver~~driver's seat of his vehicle and remained at a complete stop within the
19 confines of the SR-86 Border Patrol checkpoint.

1 ~~138.158.~~ After approximately 80 seconds of Plaintiff being detained
2 by Agent Frye at the checkpoint, Agent Frye asked another agent on the South
3 side of the checkpoint where the supervisor went.

4 ~~139.159.~~ A few seconds later, Defendant Roher began approaching
5 the scene by foot from where he had been stationed on the South side of the
6 checkpoint's primary stop location.

7 ~~140.160.~~ At the time, Defendant Roher was working an eight-hour
8 Operation Stonegarden shift.

9 ~~141.161.~~ At this moment, Defendant Roher assumed control of the
10 law enforcement interaction with Plaintiff.

11 ~~142.162.~~ Upon taking over the law enforcement interaction with
12 Plaintiff, Defendant Roher learned from Agent Frye that he had refused to
13 allow Plaintiff to proceed down the highway because Plaintiff had not yet
14 declared his citizenship status.

15 ~~143.163.~~ Defendant Roher then explained to Plaintiff that Plaintiff
16 needed to answer Agent Frye's immigration questions.

17 ~~144.164.~~ When Defendant Roher continued detaining Plaintiff in the
18 lane of traffic, Plaintiff asked Defendant Roher what law he thought Plaintiff
19 was violating.

1 ~~145.165.~~ In response, Defendant Roher indicated Plaintiff could
2 leave the checkpoint.

3 ~~146.166.~~ The total elapsed time that Defendant Roher detained
4 Plaintiff at the same spot where Plaintiff had initially come to a complete stop
5 while being detained by Agent Frye was approximately 64 seconds.

6 ~~147.167.~~ Plaintiff immediately complied with Defendant Roher's
7 instruction to leave the checkpoint and began to drive down the highway.

8 ~~148.168.~~ While beginning to accelerate away from the Border Patrol
9 checkpoint, Plaintiff glanced in his mirror and immediately noticed that
10 Defendant Roher was running toward his PCSD patrol vehicle.

11 ~~149.169.~~ Plaintiff interpreted this movement by Defendant Roher as
12 a clear indication that Defendant Roher intended to effectuate a traffic stop on
13 Plaintiff.

14 ~~150.170.~~ Plaintiff then pulled his vehicle to the right shoulder of
15 SR-86, several dozen yards east of the Border Patrol checkpoint.

16 ~~151.171.~~ Defendant Roher got into his PCSD patrol vehicle and
17 drove several dozen yards to where Plaintiff was now parked on the right-
18 hand shoulder of SR-86.

1 ~~152.172.~~ Plaintiff remained seated in the driver seat of his vehicle,
2 and Defendant Roher exited his PCSD patrol vehicle and approached
3 Plaintiff's driver-side window.

4 ~~153.173.~~ Defendant Roher requested Plaintiff to exit his vehicle.

5 ~~154.174.~~ When Plaintiff requested to know whether he was being
6 detained, Defendant Roher ordered Plaintiff out of his vehicle without
7 answering the question.

8 ~~155.175.~~ Plaintiff exited his vehicle.

9 ~~156.176.~~ Defendant Roher requested Plaintiff to provide his photo
10 identification.

11 ~~157.177.~~ Plaintiff handed his photo identification to Defendant
12 Roher, asked him who his supervisor was, and asked him to call his
13 supervisor to the scene.

14 ~~158.178.~~ After failing to answer some of Defendant Roher's
15 questions, Defendant Roher arrested and handcuffed Plaintiff.

16 ~~159.179.~~ In violation of A.R.S. § 13-3888, Defendant Roher failed
17 to inform Plaintiff of his authority and the cause for the arrest.

18 ~~160.180.~~ After effectuating the arrest, Defendant Roher revealed to
19 Plaintiff that he had been familiar with Plaintiff prior to that day and knew

1 that Plaintiff passed through the SR-86 checkpoint on a somewhat regular
2 basis.

3 ~~161-181.~~ Defendant Roher revealed to Plaintiff that he was familiar
4 with Plaintiff's ideological views regarding Border Patrol checkpoints.

5 ~~162-182.~~ Defendant Roher revealed to Plaintiff that he was aware
6 that Plaintiff was delayed in the lane of traffic at the Border Patrol checkpoint
7 because a federal agent was detaining him there.

8 ~~163-183.~~ While Plaintiff was still in handcuffs, Defendant Kunze
9 arrived to the scene. Defendant Kunze ratified Defendant Roher's decision to
10 arrest Plaintiff.

11 ~~164-184.~~ Months following the April 10, 2017, arrest, Defendant
12 Roher admitted to discussing Plaintiff with Border Patrol employees prior to
13 April 10, 2017.

14 ~~165-185.~~ On or about September 27, 2017, through a process server,
15 Plaintiff served Notices of Claim pursuant to A.R.S. § 12-821.01, to
16 Defendant Pima County Board of Supervisors; Defendant Pima County
17 Sheriff's Department; Defendant Pima County Sheriff Mark Napier;
18 Defendant Pima County Deputy Ryan Roher; and Defendant Pima County
19 Deputy Brian Kunze.

1 CLAIMS FOR RELIEF

2 **COUNT I**

3 VIOLATION OF FIRST AND FOURTEENTH AMENDMENT RIGHTS
4 42 U.S.C. § 1983

5
6
7 Violations of First and Fourteenth Amendment Rights (Free Speech)
8 Against all County and Federal Defendants

9
10 ~~166-186.~~ Plaintiff ~~reasserts those hereby realleges and incorporates~~
11 ~~by reference the~~ allegations contained in paragraphs 1-~~175~~185 as though fully
12 set forth herein.

13 ~~17.— On April 10, 2017, Plaintiff was exercising his First Amendment~~
14 ~~right not to speak, a clearly established right first articulated by the U.S.~~
15 ~~Supreme Court in 1943 and subsequently reaffirmed and upheld numerous~~
16 ~~times in the intervening years.~~

17 ~~18.— Defendants Roher and Kunze were aware at all relevant times~~
18 ~~that Plaintiff was exercising this First Amendment right not to speak on April~~
19 ~~10, 2017.~~

20 ~~19.— Defendants Roher and Kunze were aware at all times that~~
21 ~~Plaintiff had not moved from the checkpoint because law enforcement~~
22 ~~officials refused to allow Plaintiff to continue down the highway without first~~
23 ~~speaking on a topic about which Plaintiff desired not to speak.~~

1 ~~20.— Defendant Roher was aware of no law— local, state, or federal—~~
2 ~~that required U.S. citizen motorists such as Plaintiff to declare their~~
3 ~~citizenship status at a Border Patrol checkpoint.~~

4 ~~21.— Defendant Roher retaliated against Plaintiff by effectuating an~~
5 ~~arrest, in direct response to Plaintiff’s unwillingness to speak on a topic about~~
6 ~~which Plaintiff desired not to speak.~~

7 ~~22.— Defendant Kunze ratified Defendant Roher’s retaliatory arrest.~~

8 ~~23.— Defendant Roher’s and Defendant Kunze’s actions would ‘chill a~~
9 ~~person of ordinary firmness’ from continuing to engage in the First~~
10 ~~Amendment protected activity.~~

11 ~~24.— The exercise of Plaintiff’s protected right was a substantial and~~
12 ~~motivating factor for the Defendants’ conduct and reveals the intention to~~
13 ~~interfere with Plaintiff’s First Amendment rights.~~

14 ~~187. The actions of County and Federal Defendants, as set forth~~
15 ~~above, violated Plaintiff’s right to freedom of speech guaranteed by the First~~
16 ~~Amendment to the Constitution and applicable to the county Defendants~~
17 ~~through the Fourteenth Amendment to the Constitution. Defendants, through~~
18 ~~the acts described above, acted to eliminate and chill Plaintiff’s exercise of his~~
19 ~~right to speak and, by extension, his right not to speak.~~

1 188. Plaintiff's choice not to speak on April 10, 2017, was a deliberate
2 choice not to express an ideological viewpoint with which Plaintiff disagrees.
3 In particular, Plaintiff's decision not to speak at the SR-86 checkpoint was a
4 decision to not acknowledge or bear witness to a government activity with
5 which Plaintiff disagrees – the maintenance and operation of unlawful interior
6 checkpoints. Plaintiff's silence was a pointed expression of anguish about the
7 current domestic affairs of his government.

8 189. Since April 10, 2017, Plaintiff has continued to exercise his First
9 and Fourteenth Amendment rights at the SR-86 checkpoint.

10 167.190. The First and Fourteenth Amendment right not to speak in
11 this particular context was clearly established as of April 10, 2017.

12 191. As a proximate result of the wrongful and malicious acts of
13 Defendants ~~Roher and Kunze~~, Plaintiff has suffered compensable and
14 irreparable injuries including having his right to engage in the constitutionally
15 protected activity of ideological speech truncated, extinguished, and/or
16 deprived him.

17 168.192. At all times relevant herein, the County Defendants were
18 acting under the color of state law: in their causing the deprivation of
19 Plaintiff's First and Fourteenth Amendment rights.

1 Within the Checkpoint Primary Inspection Lane (*City of Indianapolis v.*
2 *Edmond*, 531 U.S. 32 (2000))
3 42 U.S.C. § 1983

4
5 Against all County and Federal Defendants

6
7 ~~171.196.~~ Plaintiff ~~reasserts those hereby realleges and incorporates~~
8 ~~by reference the~~ allegations contained in paragraphs 1-~~189~~195 as though fully
9 set forth herein.

10 197. The United States Supreme Court has clarified the lawful scope
11 and purpose of interior checkpoints in *United States v. Martinez-Fuerte*, 428
12 *U.S.* 543 (1976) and *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S. Ct.
13 447 (2000). Pursuant to *Martinez-Fuerte v. United States*, 428 U.S. 543
14 ~~(1976), and consistent with the Fourth Amendment, the U.S. Border Patrol~~
15 ~~has~~ Checkpoints operated with the primary purpose of detecting illegal
16 narcotics and/or ordinary criminal wrongdoing, and which result in the
17 temporary seizure of motorists absent individualized suspicion, are violative
18 of the Fourth Amendment.

19 172.198. Consistent with the Fourth Amendment, the Federal
20 Defendants have the legal authority to maintain the SR-86 checkpoint for the
21 primary purpose of detecting and apprehending individuals unlawfully present
22 in the United States.

1 ~~173-199.~~ Pursuant to ~~Martinez-Fuerte v. United States, 428 U.S.~~
2 ~~543 (1976), the U.S. Border Patrol has~~ The Federal Defendants have the legal
3 authority to briefly seize, ~~absent particularized suspicion,~~ motorists passing
4 through the SR-86 checkpoint ~~for the limited purpose of asking to allow~~
5 federal agents to ask one or two questions intended to confirm that the vehicle
6 contains no unlawfully present aliens. Such legal authority exists; however,
7 only if the checkpoint conforms with the Fourth Amendment requirements
8 articulated in *Martinez-Fuerte* and *City of Indianapolis v. Edmond*. The SR-
9 86 checkpoint does not conform to those requirements.

10 ~~174-200.~~ ~~The ability of the U.S. Border Patrol~~ The Federal
11 Defendants' lawful authority to briefly seize motorists at the SR-86
12 checkpoint without ~~particularized~~ individualized suspicion is contingent upon
13 the ~~U.S. Border Patrol's~~ Federal Defendants' maintaining such checkpoint for
14 the primary purpose of enforcing the nation's immigration laws.

15 ~~175-201.~~ The ~~Border Patrol's~~ Federal Defendants' primary purpose
16 for operating the SR-86 checkpoint is not to detect and apprehend aliens who
17 are unlawfully present in the ~~U.S.~~ United States, or to otherwise enforce the
18 nation's immigration laws.

19 202. ~~In particular, on~~ On April 10, 2017, the ~~U.S. Border~~
20 ~~Patrol~~ Federal Defendants operated the SR-86 checkpoint in such a manner

1 that ~~it~~the checkpoint's primary purpose ~~for operating the~~ was to detect
2 general criminal wrongdoing.

3 176.203. On April 10, 2017, the County Defendants collaborated
4 with the Federal Defendants in such a way that the primary purpose of the
5 SR-86 checkpoint on that particular day was for general law was not the
6 enforcement purposes. of federal immigration laws but rather the detection
7 of general criminal wrongdoing.

8 204. Upon arriving at the SR-86 Border Patrol checkpoint on April
9 10, 2017, The County Defendants, independent of their Federal Defendant
10 partners, possess an independent legal obligation to conduct their state-law
11 law enforcement duties in such a manner that does not run afoul of the
12 principles of *City of Indianapolis v. Edmond*.

13 26. On April 10, 2017, and on many occasions since that date,
14 Plaintiff was unlawfully seized ~~and detained by U.S. Border Patrol agents, as~~
15 ~~the U.S. Border Patrol possessed no particularized suspicion to believe that~~
16 ~~Plaintiff's vehicle contained aliens unlawfully present in the U.S.~~

17 177.205. The U.S. Border Patrol on that particular day was
18 operating by Defendants at the primary inspection lane of the SR-86
19 checkpoint. These unlawful seizures in the primary inspection lane resulted
20 from Defendants' operation of the checkpoint in such a manner that the

1 ~~primary purpose of the checkpoint was for detection of general criminal~~
2 ~~wrongdoing rather than for the for a primary purpose of detecting and~~
3 ~~apprehending aliens unlawfully present in the U.S. not countenanced by the~~
4 ~~Fourth Amendment.~~

5 27.— ~~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 28.— ~~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.~~

15 206. Defendant Roher knowingly restrained the liberty of The
16 unlawful conditions of the SR-86 checkpoint, as they existed on April 10,
17 2017, continue to exist at the SR-86 checkpoint today. To the extent that
18 certain conditions existing on April 10, 2017, at the SR-86 checkpoint are no
19 longer present, both County and Federal Defendants are capable of resuming
20 such conditions at a moment's notice and without the rigors of legislative or

1 administrative rulemaking processes. Absent intervention by this Court, it is
2 likely that Plaintiff will continue to be unlawfully seized by County and
3 Federal Defendants within the primary inspection lane of the SR-86
4 checkpoint, in violation of the principles of *Martinez-Fuerte* and *City of*
5 *Indianapolis v. Edmond*.

6 ~~29.—Plaintiff without particularized suspicion, despite the fact that~~
7 ~~Defendant Roher lacked the legal authority to investigate possible violations~~
8 ~~of federal immigration law—the only purpose for which the existence of the~~
9 ~~SR-86 checkpoint is authorized.~~

10 ~~30.—Defendant Roher was acting under color of state law.~~

11 ~~31.—Plaintiff’s right to be free from suspicionless seizures under these~~
12 ~~circumstances has been clearly established since at least the year 2000.~~

13 ~~32.—Plaintiff is entitled to~~seeks ~~declaratory and injunctive relief for~~
14 ~~this Fourth and Fourteenth Amendment deprivations~~ as to this Claim, as against
15 all Defendants, pursuant to the Fourth Amendment principles established in
16 *City of Indianapolis v. Edmond*.

17 ~~178.207. Plaintiff is entitled to monetary damages pursuant to 42~~
18 ~~U.S.C. § 1983 for this Fourth and Fourteenth Amendment violation.~~

19 **COUNT III**
20 **VIOLATION OF FOURTH AND FOURTEENTH AMENDMENT**
21 **RIGHTS FOR ARREST ABSENT PROBABLE CAUSE**
22 **42 U.S.C. § 1983**

1
2 **Violation of Fourth and Fourteenth Amendment Rights for Arrest**
3 **Absent Probable Cause**
4 **Against Defendants Roher and Kunze**
5

6 ~~179-208.~~ Plaintiff ~~reasserts those~~ hereby realleges and incorporates
7 by reference the allegations contained in paragraphs 1-~~204~~207 as though fully
8 set forth herein.

9 ~~33.—Absent particularized suspicion that a particular vehicle contains~~
10 ~~unlawfully present aliens or that the vehicle's occupants are violating other~~
11 ~~federal laws, the U.S. Border Patrol lacks legal authority to insist that a~~
12 ~~motorist move his or her vehicle to a secondary lane within the checkpoint~~
13 ~~area.~~

14 ~~34.—On April 10, 2017, U.S. Border Patrol agents and Defendant~~
15 ~~Roher insisted that Plaintiff move his vehicle into the secondary inspection~~
16 ~~lane of the SR-86 checkpoint without possessing particularized suspicion that~~
17 ~~Plaintiff's vehicle contained aliens unlawfully present in the U.S. and without~~
18 ~~particularized suspicion that Plaintiff had committed any state or federal~~
19 ~~crime for which Defendant Roher had legal authority to arrest.~~

20 ~~180-209.~~ Defendant Roher was, aware that agents with the U.S.
21 Border Patrol ~~agents~~ had found no particularized suspicion to continue the
22 detention of or to arrest Plaintiff, effectuated an arrest of Plaintiff purportedly
23 under the state law authority granted to him as an Arizona peace officer.

1 ~~181.210.~~ Leading up to, during, and after the arrest, Defendant
2 Roher was ~~similarly~~ unable to articulate any reasonable suspicion or probable
3 cause to believe that Plaintiff had committed or was committing a state
4 misdemeanor, felony, or petty offense.

5 ~~182.211.~~ Defendant Roher arrested Plaintiff for allegedly violating
6 A.R.S. § 13-2906 (Obstructing a highway or other public thoroughfare),
7 despite the fact that Defendant Roher had no probable cause to believe that
8 Plaintiff committed or was committing such crime.

9 ~~183.212.~~ Defendant Kunze ratified Defendant Roher's actions and
10 further prolonged the length of Plaintiff's arrest, despite the fact that neither
11 Defendant Kunze ~~lacked~~ nor Defendant Roher had probable cause to believe
12 that Plaintiff committed any crime.

13 ~~184.213.~~ At all relevant times, Defendants Roher and Kunze were
14 acting under color of state law.

15 ~~185.214.~~ Plaintiff's right to be free from arrest absent probable
16 cause to believe that he committed or was committing a crime was clearly
17 established as of April 10, 2017.

18 ~~186.215.~~ Under this Count, Plaintiff ~~is entitled to injunctive and~~
19 ~~declaratory relief related to his arrest by~~ seeks damages pursuant to 42 U.S.C.
20 § 1983 against Defendants Roher and Kunze, for effectuating and

1 subsequently ratifying Plaintiff's arrest, without probable cause to believe that
2 Plaintiff committed or was committing a crime.

3 ~~35.— Under this Count, Plaintiff is entitled to monetary damages~~
4 ~~pursuant to 42 U.S.C. § 1983.~~

5 **COUNT IV**

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

8
9 ~~Violation of Constitutional Rights Pursuant to Monell v. New York City~~
10 ~~Department of Social Services~~
11 ~~Against Defendant Napier, in his Official Capacity~~

12 ~~187.216.~~ Plaintiff ~~reasserts those~~ hereby realleges and incorporates
13 by reference the allegations contained in paragraphs 1-215 as though fully set
14 forth herein.

15 ~~188.217.~~ As Sheriff, Defendant Napier is a final policymaker over
16 the County's law enforcement matters.

17 ~~189.218.~~ Defendant Napier created a custom and practice of
18 routinely permitting PCSD deputies, including Defendant Roher, to serve
19 entire work shifts while stationed at the SR-86 checkpoint.

20 ~~190.219.~~ This custom and practice routinely put PCSD in a position
21 of depriving motorists of their constitutional rights under the Fourth and
22 Fourteenth Amendments, by converting an already-questionable Border Patrol
23 checkpoint devoted primarily to general law enforcement purposes into a

1 checkpoint unquestionably tipping into the unconstitutional zone, in clear
2 violation of *City of Indianapolis v. Edmond*.

3 ~~191-220.~~ Defendant Napier’s actions, creating a custom and practice
4 related to operations at the SR-86 checkpoint, amounted to deliberate
5 indifference of Plaintiff’s constitutional rights.

6 ~~192-221.~~ Plaintiff has been injured by this custom and practice and
7 is entitled to damages against Defendant Napier in his official capacity for
8 maintaining a custom or practice within PCSD that is likely to deprive local
9 residents, such as Plaintiff, of their Fourth and Fourteenth Amendment rights.

10 **COUNT V**

11 ~~**VIOLATION OF 42 U.S.C. § 1983, FAILURE TO TRAIN, AS TO**~~
12 ~~**DEFENDANT NAPIER IN HIS INDIVIDUAL CAPACITY AND AS TO**~~
13 ~~**DEFENDANTS DUPNIK, NANOS, KUNZE, DOE DEFENDANTS 1-20,**~~
14 ~~**AND DEFENDANT PIMA COUNTY BOARD OF SUPERVISORS**~~
15

16 ~~**Failure to Train, 42 U.S.C. § 1983**~~
17 ~~**Against Defendant Napier in his Individual Capacity, and Against**~~
18 ~~**Defendants Nanos, Kunze, and Pima County Board of Supervisors**~~
19

20 ~~193-222.~~ Plaintiff ~~reasserts~~~~hereby realleges and incorporates by~~
21 ~~reference~~ the allegations contained in paragraphs 1-221 as though fully set
22 forth herein.

23 ~~194-223.~~ Prior to April 10, 2017, there existed a pattern of similar
24 constitutional violations by similarly untrained employees of PCSD
25 ~~performing law enforcement duties at the SR-86 checkpoint and at other~~

1 checkpoints operated by the Border Patrol within the unincorporated portions
2 of Pima County.

3 195.224. ~~Defendants~~Defendant Pima County Supervisors, failed to
4 enforce or otherwise encourage proper training of the Pima County Sheriff's
5 Department ~~Deputies~~deputies and, therefore, failed to adequately train their
6 deputies to handle usual and recurring situations.

7 ~~36.— Defendant Pima County Board of Supervisors were indifferent to~~
8 ~~the substantial risk of inadequate policies to prevent violations of law by its~~
9 ~~Sheriff's deputies. The failure to do so caused the deprivation of Plaintiff's~~
10 ~~constitutional rights.~~

11 196.225. Defendants failed to train their deputies to handle usual
12 and recurring situations.

13 197.226. Defendants were indifferent to the substantial risk of
14 inadequate ~~policies~~training to prevent violations of law by its deputies.

15 198.227. Defendants' failure to ~~do so caused~~train was the proximate
16 cause of the deprivation of Plaintiff's constitutional rights.

17 199.228. ~~Defendant Pima County Board of Supervisors and~~
18 ~~Defendant Sheriffs~~Defendants could have prevented the constitutional
19 violation of Plaintiff with an appropriate ~~policy~~training.

1 200.229. As a result, Plaintiff has been injured and is entitled to
2 damages.

3 **COUNT VI**

4 ~~VIOLATION OF 42 U.S.C. § 1983, FAILURE TO SUPERVISE, AS TO~~
5 ~~DEFENDANT NAPIER IN HIS INDIVIDUAL CAPACITY, AND AS TO~~
6 ~~DEFENDANTS DUPNIK, NANOS, KUNZE, DOE DEFENDANTS 1-20,~~
7 ~~AND DEFENDANT PIMA COUNTY BOARD OF SUPERVISORS~~
8

9 **Failure to Supervise, 42 U.S.C. § 1983**
10 **Against Defendant Napier in his Individual Capacity, and Against**
11 **Defendants Nanos, Kunze, and Pima County Board of Supervisors**
12

13 201.230. Plaintiff ~~reasserts~~hereby realleges and incorporates by
14 reference the allegations contained in paragraphs 1-~~230~~229 as though fully set
15 forth herein.

16 202.231. Defendants Napier, Nanos, Kunze, and Pima County
17 Board of Supervisors were acting under the color of state law at all times
18 relevant herein.

19 203.232. Defendants failed to properly supervise their deputies,
20 thereby depriving Plaintiff of his constitutional rights.

21 204.233. Defendants ~~personally~~ knew or reasonably should have
22 known that their subordinates were engaging in acts that deprived Plaintiff ~~of~~
23 his(and other motorists) of their constitutional rights.

1 DEFENDANTS ROHER AND KUNZE

2
3 242.—False Imprisonment, Arizona State Law
4 Against Defendants Roher and Kunze

5
6 212-241. Plaintiff ~~reasserts~~ hereby realleges and incorporates by
7 reference the allegations contained in paragraphs 1-~~241~~240 as though fully set
8 forth herein.

9 213-242. ~~243.~~—On April 10, 2017, Plaintiff was falsely imprisoned
10 by Defendant Roher when he was handcuffed and prevented from leaving his
11 location outside of the SR-86 checkpoint.

12 214-243. ~~244.~~—The necessary elements ~~to prove of~~ false
13 imprisonment under Arizona law are: (1) the defendant acted with intent to
14 confine another person within boundaries fixed by the defendant; (2) the
15 defendant’s act resulted in such confinement, either directly or indirectly; and
16 (3) the other person was conscious of the confinement or was harmed by it.

17 *See Hart v. Raynor*, 190 Ariz. 272, ~~281, 947 P.2d 846, 855~~ (App. 1997).
18 ~~“Any restraint, however slight, upon another’s liberty to come and go as one~~
19 ~~pleases, constitutes an arrest.”~~ *See*; *Boies v. Raynor*, 89 Ariz. 257, ~~259, 361~~
20 ~~P.2d 1, 2~~ (1961), *quoting Swetman v. F.W. Woolworth Co.*, 83 Ariz. 189, 192,
21 ~~318 P.2d 364, 366~~ (1957).

22 215-244. ~~245.~~—Defendant Roher acted with intent and confined
23 Plaintiff within a fixed boundary, at the side of State Route 86.

1 245. 246.—Plaintiff did not consent to such confinement.

2 216.246. Defendant Roher’s conduct resulted in the confinement of
3 Plaintiff, without ~~Plaintiff’s consent, and without~~ probable suspicion of any
4 crime or state traffic violation committed by Plaintiff.

5 247. 247.—In confining Plaintiff without Plaintiff’s consent,
6 Defendant Roher acted outside the scope of the warrantless arrest authority
7 conferred upon him by Title 13 and Title 41 of Arizona Revised Statutes.

8 217.248. Plaintiff was conscious of the confinement inflicted upon
9 him by Defendant Roher ~~and confirmed by Defendant Kunze~~ on April 10,
10 2017.

11 249. 248.—Defendant Kunze ratified and acquiesced to the actions
12 that Defendant Roher took in confining Plaintiff. Defendant Kunze had the
13 authority and ability to reverse or otherwise halt the unlawful actions of
14 Defendant Roher.

15 218.250. Plaintiff has been damaged and is entitled to monetary
16 damages.

17

1 **COUNT VIII**
2 **False Imprisonment (FTCA), 28 U.S.C. § 1346(b),**
3 **Against the United States of America**
4

5 251. Plaintiff hereby realleges and incorporates by reference the
6 allegations contained in paragraphs 1-250 as though fully set forth herein.

7 252. Through the actions described herein on April 10, 2017,
8 employees of Defendant United States of America, during the course of their
9 work duties at the SR-86 checkpoint, intentionally confined Plaintiff within
10 the boundaries of the checkpoint.

11 253. Additionally, through the actions described herein on April 10,
12 2017, employees of Defendant United States of America, during the course of
13 their work duties, induced and/or encouraged Defendant Roher to confine
14 Plaintiff in handcuffs after leaving the boundaries of the SR-86 checkpoint.

15 254. Plaintiff did not consent to such confinement.

16 255. Employees of Defendant United States of America acted with
17 intent in encouraging and/or inducing Defendant Roher to confine Plaintiff at
18 the side of State Route 86. Additionally, employees of Defendant United
19 States of America acted with intent in confining Plaintiff within the
20 boundaries of the SR-86 checkpoint prior to Defendant Kunze's placing
21 Plaintiff into handcuffs.

1 256. The conduct of employees of Defendant United States of
2 America resulted in the confinement of Plaintiff, without probable suspicion
3 of any crime, state traffic violation, or civil immigration violation under
4 federal law.

5 257. Plaintiff was conscious of the confinement inflicted upon him on
6 April 10, 2017.

7 258. As a proximate result of the acts alleged herein, Plaintiff is
8 entitled to damages in an amount to be proven at trial.

9 **REQUEST FOR RELIEF**

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

11 ~~1. — By granting judgment in favor of Plaintiff on all~~
12 ~~counts Declaratory relief concerning the unconstitutionality of~~
13 ~~Defendants' actions as described herein and awarding damages~~
14 ~~in an amount to be determined at trial.~~

15 ~~2. — By awarding injunctive relief, as outlined in the above~~
16 ~~Counts.~~

17 ~~3.1. — By awarding declaratory relief, as outlined in the above~~
18 ~~Counts I and II.~~

19 ~~4. — By awarding punitive or exemplary damages, pursuant to~~
20 ~~42 U.S.C. § 1983.~~

1 2. ~~3.~~ By awarding Plaintiff his attorney's A preliminary
2 and permanent injunction prohibiting Defendants from engaging
3 in any of the unconstitutional behaviors as described herein and
4 as outlined in Counts I and II; and to put into place safeguards
5 sufficient to ensure that these constitutional violations do not
6 continue in the future;

7 3. Compensatory, general, statutory, and special damages in
8 an amount according to proof;

9 Attorneys' fees and costs-

10 4. ~~4.~~ By awarding such, and costs of suit, as provided by
11 42 U.S.C. § 1988, and any other applicable authority;
12

13 5. Such other relief as ~~is~~this Court deems appropriate.

14 Dated this ~~2nd~~31st day of ~~July~~December, 2018.

15
16 Ralph E. Ellinwood, Attorney at Law, PLLC

17
18
19 /s/ Ralph E. Ellinwood _____

20 Ralph E. Ellinwood
21 Attorney for Plaintiff