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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 Sheriff's Department, in their

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

PLAINTIFF'S INITIAL MIDP  
DISCLOSURE STATEMENT

individual capacities;

Defendants.

14

15

Plaintiff, by and through counsel undersigned, pursuant to the Court's

16

Mandatory Initial Discovery Pilot Project, effective May 1, 2017, and Rule

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26(a)(1), *Federal Rules of Civil Procedure*,

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This Initial Disclosure Statement and its content represent the product

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of the investigation to date. This matter is only in the initial phase of

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discovery and further investigation and discovery may bring to light

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additional information that may have a bearing on Plaintiff's cause of

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action. Accordingly, this Initial Disclosure Statement is not now intended to

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represent Plaintiff's complete case but is merely the Initial Disclosure

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Statement until further information is obtained regarding the Defendants

25

specific defenses and is subject to additional supplementation. Therefore, if

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any part of this Initial Disclosure Statement is ever read to a jury, fairness

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would require that this preliminary statement also be read indicating that at

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the time it was filed there was only limited access to information.

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Accordingly, Plaintiffs disclose the following information pursuant to the

30

Court's Mandatory Initial Discovery Pilot Project:

31

32

33A. **State the names and, if known, the addresses and telephone  
34 numbers of all persons believed likely to have discoverable  
35 information relevant to any party's claims or defenses, and  
36 provide a fair description of the nature of the information each  
37 such person is believed to possess.**

38  
39 1. Terrence Bressi  
40 c/o Ralph E. Ellinwood, Esq.  
41 PO Box 40158  
42 Tucson, AZ 85717  
43 (520) 413-2323  
44

45 Mr. Bressi will testify regarding his continuing stops, extended and  
46 unlawful detentions, constitutional violations committed against him,  
47 assaults, and arrests by Pima County Deputy Sheriffs and United States  
48 Customs and Border Protection Agents at the SR-86 roadblock. Mr. Bressi  
49 will also testify concerning his knowledge of the Stonegarden Grant  
50 Program, it's purpose, the multi-jurisdictional teamwork by local law  
51 enforcement, state law enforcement, and federal law enforcement. Mr.  
52 Bressi will provide incidents that have occurred since 2002 to establish an  
53 intentional pattern of harassment, blatant disregard of his constitutional  
54 rights, and the reckless and callous indifference of those law enforcement  
55 officials at each incident. He will provide documentation that proves the  
56 local, state, and federal officials retaliated against him personally, that they  
57 knew who he was, they had established he was a United States citizen, and  
58 they knew his vehicle on sight. Mr. Bressi will testify and show that  
59 supervisors knew and/or should have known that their subordinates would  
60 cause Mr. Bressi deprivation of his rights and did not stop them, but rather  
61 acquiesced to the subordinate's unconstitutional conduct toward him. Mr.  
62 Bressi will also testify and provide documentation regarding how CBP  
63 agents and others posted personal information regarding him, including his  
64 address, his work place, and the time he spent in the Coast Guard;  
65 information not readily available to the general public.

66  
67 2. Sheriff Mark Napier  
68 Pima County Sheriff's Department  
69 1750 E. Benson Highway  
70 Tucson, AZ 85714  
71

72 It is anticipated that Sheriff Napier will testify regarding any official  
73 training, policies, and procedures in place or created to facilitate  
74 participation of Pima County Sheriff's Deputies in the Stonegarden Grant  
75 Program together with United States Customs and Border Protection  
76 Agents. He may also testify regarding his knowledge of the policies,  
77 procedures, and customs of the Pima County Sheriff's Department, and the  
78 training provided to the Pima County Deputies regarding possible  
79 constitutional violations of travelers through the SR-86 roadblock.

80

81 3. Representative of the Pima County Board of Supervisors  
82 Will Supplement

83

84 It is anticipated that a representative of the Pima County Board of  
85 Supervisors who has knowledge of the policies, procedures, training,  
86 customs, and conduct of the Pima County Sheriff's Department will testify  
87 regarding their knowledge and experience with the Operation Stonegarden  
88 Grant Program. This person will also testify regarding any written policies  
89 specifically designed for the Pima County Sheriff's Deputies participation in  
90 Operation Stonegarden, if any exist. It is also anticipated that a  
91 representative of the Pima County Board of Supervisors will testify  
92 regarding public meetings held between February and September 2018 to  
93 decide whether or not to continue accepting funds for the Operation  
94 Stonegarden Grant Program.

95

96 4. Former Pima County Sheriff Clarence Dupnik  
97 Will Supplement

98

99 Former Pima County Sheriff Clarence Dupnik will testify regarding  
100 any policies, procedures, training, and customs in existence, or lack thereof,  
101 during his tenure as Pima County Sheriff, particularly any participation by  
102 Pima County Sheriff's Deputies in Operation Stonegarden. He will also  
103 testify regarding any disciplinary action necessary for any deputies whose  
104 behavior fell short of those policies, procedures, customs, and conduct,  
105 during an Operation Stonegarden deployment.

106

107 5. Former Pima County Sheriff Christopher Nanos  
108 Will Supplement

109

110 Former Pima County Sheriff Christopher Nanos will testify regarding  
111 any policies, procedures, training, and customs in existence, or lack thereof,

112 during his tenure as Pima County Sheriff, particularly any participation by  
113 Pima County Sheriff's Deputies in Operation Stonegarden. He will also  
114 testify regarding any disciplinary action necessary for any deputies whose  
115 behavior fell short of those policies, procedures, customs, and conduct,  
116 during an Operation Stonegarden deployment.

117

118         6.       Deputy Ryan Roher  
119                 Pima County Sheriff's Department  
120                 1750 E. Benson Highway  
121                 Tucson, AZ 85714

122

123         It is anticipated that Deputy Roher will testify regarding his many  
124 encounters with Plaintiff, including the arrest of April 10, 2017. Deputy  
125 Roher may also testify regarding his training, or lack thereof, and  
126 participation, in the Stonegarden Grant Program, and his knowledge of the  
127 policies, procedures, and customs of the Pima County Sheriff's Department.  
128 He may also testify regarding the lack of supervision of Pima County  
129 Deputies at the federal roadblock located at SR-86 during his deployments.  
130 Deputy Roher may also testify regarding the training, or lack thereof, that he  
131 received regarding possible constitutional violations of travelers through the  
132 SR-86 roadblock.

133

134         7.       Deputy Sergeant Brian Kunze  
135                 Pima County Sheriff's Department  
136                 1750 E. Benson Highway  
137                 Tucson, AZ 85714

138

139         It is anticipated that Sergeant Kunze will testify regarding his  
140 encounters with Plaintiff, including the arrest of April 10, 2017. Sergeant  
141 Kunze may also testify regarding his training, or lack thereof, and  
142 participation, in the Stonegarden Grant Program, and his knowledge of the  
143 policies, procedures, and customs of the Pima County Sheriff's Department.  
144 He may also testify regarding the lack of supervision of Pima County  
145 Deputies at the federal roadblock located at SR-86 during his deployments.  
146 Sergeant Kunze may also testify regarding the training, or lack thereof, that  
147 he received regarding possible constitutional violations of travelers through  
148 the SR-86 roadblock.

149

150         9.       Captain Deanna Johnson  
151                 OPSG Coordinator

152 Pima County Sheriff's Department  
153 1750 E. Benson Highway  
154 Tucson, AZ 85714  
155

156 It is anticipated that Captain Johnson will testify regarding her duties  
157 as PCSD OPSG Coordinator along with any official training, policies, and  
158 procedures in place or created to facilitate participation of Pima County  
159 Sheriff's Deputies in the Operation Stonegarden Grant Program together  
160 with the United States Customs and Border Protection. She may also testify  
161 regarding her knowledge of the policies, procedures, and customs of the  
162 Pima County Sheriff's Department, and the training provided to the Pima  
163 County Deputies regarding their participation in the Operation Stonegarden  
164 Grant Program.

165  
166 **B. State the names and, if known, the addresses and telephone  
167 numbers of all persons who you believe have given written or  
168 recorded statements relevant to any party's claim or defenses.  
169 Unless you assert a privilege or work product protection against  
170 disclosure under applicable law, attach a copy of each such  
171 statement if it is in your possession, custody or control. If not in  
172 your possession, custody or control, state the name and, if known,  
173 the address and telephone number of each person who you  
174 believe has custody of a copy.**

175  
176 1. Terrence Bressi  
177 c/o Ralph E. Ellinwood, Esq.  
178 PO Box 40158  
179 Tucson, AZ 85717  
180 (520) 413-2323  
181

182 Excerpts from deposition transcript of Plaintiff taken on April 27,  
183 2005, in the possession, custody, and control of Plaintiff. The full  
184 deposition transcript was not transcribed at the time due to cost concerns.  
185 We checked with the court reporting firm who scribed the deposition and  
186 discovered the court reporter has died and the notes are not available for  
187 transcription. Excerpt Bates Nos. BRE 3841-60.

188  
189 2. Deputy Ryan Roher  
190 Pima County Sheriff's Department  
191 1750 E. Benson Highway

192 Tucson, AZ 85714

193

194 Rule 15 transcript taken January 25, 2018, of PCSD Roher, and  
195 Incident Reports in Plaintiff's possession being disclosed at this time.  
196 Plaintiff personally transcribed the encounter of April 10, 2017. Bates Nos.  
197 3398-3580.

198

199 3. Sergeant Brian Kunze  
200 Pima County Sheriff's Department  
201 1750 E. Benson Highway  
202 Tucson, AZ 85714

203

204 Incident Reports in Plaintiff's possession being disclosed at this time.  
205 Transcript of April 10, 2017, arrest of Plaintiff documenting Sergeant  
206 Kunze's participation. Plaintiff personally transcribed the encounter of  
207 April 10, 2017. Bates Nos. 3398-3580.

208

209 **C. List the documents, electronically stored information ("ESI"),**  
210 **tangible things, land, or other property known by you to exist,**  
211 **whether or not in your possession, custody or control, that you**  
212 **believe may be relevant to any party's claims or defenses. To the**  
213 **extent the volume of any such materials makes listing them**  
214 **individually impracticable, you may group similar documents or**  
215 **ESI into categories and describe the specific categories with**  
216 **particularity. Include in your response the names and, if known,**  
217 **the addresses and telephone numbers of the custodians of the**  
218 **documents, ESI, or tangible things, land, or other property that**  
219 **are not in your possession, custody or control. For documents**  
220 **and tangible things in your possession, custody or control, you**  
221 **may produce them with your response, or make them available**  
222 **for inspection on the date of the response, instead of listing them.**

223

224 1. Videos of Plaintiff's encounters with law enforcement at the  
225 SR-86 roadblock; Bates Nos. BRE 00001-423;

226

227 2. Pattern of Violations; Bates Nos. BRE 00424-500;

228

229 3. CBP FOIA Request Acknowledgment 2008; Bates Nos. 501-  
230 04;

231

- 232 4. Tucson CBP FOIA Request, Response, Clarification; Bates  
233 Nos. 505-10;  
234
- 235 5. United States Customs FOIA Request of April 6, 2013; Bates  
236 Nos. 511-12;  
237
- 238 6. DOJ FOIA Request of May 9, 2013, Acknowledgement,  
239 Appeal, and Denial; Bates Nos. 513-21;  
240
- 241 7. Documents received by Plaintiff that are responsive to prior  
242 FOIA requests or otherwise acquired by Plaintiff through  
243 online resources:  
244
- 245 a. GAO Report to Congressional Requesters dated July  
246 2005 Regarding Border Patrol, Available Data on  
247 Interior Checkpoints Suggest Differences in Sector  
248 Performance; Bates Nos. 522-612;
- 249 b. GAO Report to Congressional Requesters dated August  
250 2009 Regarding Border Patrol, Checkpoints Contribute  
251 to Border Patrol's Missions but More Consistent Data  
252 Collection and Performance Measurement Could  
253 Improve Effectiveness; Bates Nos. 613-759;
- 254 c. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
255 Ariz.), CBP related documents dated August 8, 2014;  
256 Bates Nos. BRE 0760-836;
- 257 d. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
258 Ariz.), CBP related documents dated August 13, 2014;  
259 Bates Nos. BRE 0837-1020;
- 260 e. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
261 Ariz.), CBP related documents dated September 24,  
262 2014; Bates Nos. BRE 1021-97;
- 263 f. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
264 Ariz.), CBP related documents dated October 10, 2014;  
265 Bates Nos. BRE 1098-1156;
- 266 g. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
267 Ariz.), CBP related documents dated December 15,  
268 2014; Bates Nos. BRE 1157-1318;
- 269 h. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
270 Ariz.), CBP related documents dated December 19,  
271 2014; Bates Nos. BRE 1319-1527;



- 272 i. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
273 Ariz.), CBP related documents dated January 6, 2015;  
274 Bates Nos. BRE 1528-1677;
- 275 j. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
276 Ariz.), CBP related documents dated February 20, 2015;  
277 Bates Nos. BRE 1678-1720;
- 278 k. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
279 Ariz.), CBP related documents dated March 12, 2015;  
280 Bates Nos. BRE 1721-1866;
- 281 l. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
282 Ariz.), CBP related documents dated March 17, 2015;  
283 Bates Nos. BRE 1867-1973;
- 284 m. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
285 Ariz.), CBP related documents dated April 3, 2015;  
286 Bates Nos. BRE 1974-2019;
- 287 n. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
288 Ariz.), CBP related documents dated April 14, 2015;  
289 Bates Nos. BRE 2020-2205;
- 290 o. *ACLU Foundation of AZ v. DHS*, Case No. 14-2052 (D.  
291 Ariz.), CBP related documents dated May 21, 2015;  
292 Bates Nos. BRE 2206-375;
- 293 p. GAO Report to Congressional Requesters dated  
294 November 2017 Regarding Border Patrol, Issues Related  
295 to Agent Deployment Strategy and Immigration  
296 Checkpoints; Bates Nos. BRE 2376-467;
- 297 q. 2008 Field Inspector Manual; Bates Nos. BRE 2468-821;
- 298 r. ACLU Complaint dated October 9, 2013, regarding  
299 Roving Patrols; Bates Nos. BRE 2822-35;
- 300 s. ACLU Complaint dated January 15, 2014, regarding  
301 Investigation of Abuses; Bates Nos. BRE 2836-55;
- 302 t. ACLU article Record of Abuse dated April 28, 2014;  
303 Bates Nos. BRE 2856-87;
- 304 u. ACLU Complaint regarding Border Patrol Unlawful  
305 Search and Seizure dated June 28, 2016; Bates Nos. BRE  
306 2888-906;
- 307 v. DEA LPR Permit dated January 11, 2011; Bates Nos.  
308 BRE 2907-35;
- 309 w. DEA LPR Permit dated July 16, 2011; Bates Nos. BRE  
310 2836-46;

- 311 x. CBP Power Permit, SR82, dated July 8, 2011; Bates  
312 Nos. BRE 2947-87;
- 313 y. CBP Canopy Permit, SR85, dated July 15, 2011; Bates  
314 Nos. BRE 2988-3020;
- 315 z. CBP Checkpoint Permit, SR85B, dated July 15, 2011;  
316 Bates Nos. BRE 3021-30;
- 317 aa. CBP Tower Permit, I-19, dated August 22, 2012; Bates  
318 Nos. BRE 3031-41;
- 319 bb. CBP Checkpoint Permit, SR77, dated October 4, 2012;  
320 Bates Nos. BRE 3042-49;
- 321 cc. CBP Checkpoint Permit, SR83, dated February 13, 2012;  
322 Bates Nos. BRE 3050-56;
- 323 dd. CBP Checkpoint Permit, SR85, dated August 21, 2012;  
324 Bates Nos. BRE 3057-65;
- 325 ee. CBP Checkpoint Permit, SR82, dated March 15, 2012;  
326 Bates Nos. BRE 3066-72;
- 327 ff. CBP Checkpoint Permit, SR87, dated October 4, 2012;  
328 Bates Nos. BRE 3073-80;
- 329 gg. CBP Checkpoint Permit, SR347, dated October 4, 2012;  
330 Bates Nos. BRE 3081-90;
- 331 hh. CBP Checkpoint Permit, I-19, dated February 5, 2013;  
332 Bates Nos. 3091-108;
- 333 ii. CBP Checkpoint Permit, SR82, dated March 8, 2013;  
334 Bates Nos. BRE 3109-16;
- 335 jj. CBP Checkpoint Permit, SR83, dated March 8, 2013;  
336 Bates Nos. BRE 3117-124;
- 337 kk. CBP Checkpoint Permit, SR286, dated November 30,  
338 2011; Bates Nos. BRE 3125-35;
- 339 ll. CBP Checkpoint Permit, SR86, dated February 5, 2015;  
340 Bates Nos. BRE 3136-44;
- 341 mm. CBP Checkpoint Permit, SR86, dated February 4, 2016;  
342 Bates Nos. BRE 3145-52;
- 343 nn. CBP Checkpoint Permit, SR86, dated April 21, 2017;  
344 Bates Nos. BRE 3153-62;
- 345 oo. PCSD Loan Agreement regarding radios, dated October  
346 1, 2017; Bates Nos. BRE 3163-65;
- 347 pp. Border Patrol telling PCSD how to fill out forms, dated  
348 November 15, 2017; Bates Nos. BRE 3166-68;
- 349 qq. PCSD assisting Border Patrol with canines, dated  
350 December 1, 2017; Bates No. BRE 3169;

- 351 rr. PCSD suspension of Stonegarden, dated December 5,  
352 2017; Bates Nos. BRE 3170-71;
- 353 ss. Special radios for Stonegarden, dated December 7, 2017;  
354 Bates No. BRE 3172;
- 355 tt. Internal Concerns regarding excessive overtime, dated  
356 December 19, 2017; Bates Nos. BRE 3173-74;
- 357 uu. Briefing regarding DUI checkpoints, dated January 4,  
358 2018; Bates Nos. BRE 3175-76;
- 359 vv. Identifying PCSD point people, dated January 17, 2018;  
360 Bates Nos. BRE 3177-82;
- 361 ww. Announcing March 2018 meeting regarding  
362 Stonegarden, dated January 17, 2018; Bates Nos. BRE  
363 3183-85;
- 364 xx. E-mail regarding working closely regarding  
365 Stonegarden, dated January 18, 2017; Bates Nos. BRE  
366 3186-89;
- 367 yy. E-mail between Border Patrol and Ajo Sheriff, dated  
368 January 25, 2018; Bates No. BRE 3190;
- 369 zz. Using Stonegarden money for DUI checkpoints, dated  
370 January 25, 2018; Bates No. BRE 3191;
- 371 aaa. E-mail regarding Stonegarden Power Point, dated  
372 January 29, 2018; Bates Nos. BRE 3192-93;
- 373 bbb. PCSD/Border Patrol collaboration at special events;  
374 Bates Nos. BRE 3194-95;
- 375 ccc. E-mail regarding regular breakfasts; Bates No. BRE  
376 3196;
- 377 ddd. Fiscal year 2018 overtime summary; Bates Nos. BRE  
378 3197-99;
- 379 eee. PCSD Strategic Plan 2018-2021; Bates Nos. 3200-215;
- 380 fff. Delphi Forum, dated June 2, 2008; Bates Nos. BRE  
381 3296-98;
- 382 ggg. Delphi Forum, dated April 9, 2009; Bates Nos. BRE  
383 3299-3317;
- 384 hhh. Delphi Forum, dated April 9, 2009; Bates Nos. BRE  
385 3318-337;
- 386 iii. Delphi Forum, dated September 9, 2009; Bates Nos.  
387 BRE 3338-45;
- 388 jjj. Delphi Forum, edited June 16, 2008; Bates Nos. BRE  
389 3346-51;

- 390 kkk. Stonegarden Subrecipient Award 2018; Bates Nos. BRE  
391 3354-78;  
392 ill. Tuffly Complaint to University of Arizona, dated  
393 January 28, 2008; Bates Nos. BRE 3379-383;  
394 mmm. Tuffly follow-up Complaint to University of  
395 Arizona, dated January 29, 2008; Bates Nos. BRE 3384-  
396 89;  
397 nnn. Tuffly follow-up to University of Arizona Complaint,  
398 dated February 12, 2008; Bates Nos. BRE 3390-91;  
399 ooo. Attorney Calle Public Records Request to University of  
400 Arizona, dated February 13, 2008; Bates Nos. BRE  
401 3392-93;  
402 ppp. Plaintiff's FOIA request to University of Arizona, dated  
403 February 21, 2008; Bates Nos. BRE 3394-95;  
404 qqq. University of Arizona response to Plaintiff's request,  
405 dated April 10, 2008; Bates Nos. BRE 3396-97  
406 rrr. PCSD Note, dated August 2, 2017; Bates No. BRE 3552;  
407 sss. Stonegarden statistics 2012-2017; Bates No. BRE 3553;  
408 ttt. Excerpts of Plaintiff's Deposition taken April 27, 2005;  
409 Bates Nos. 3841-60.

410  
411 8. Articles:

- 412  
413 a. Border Patrol Videos Go Viral, dated March 29, 2013;  
414 Bates Nos. BRE 3216-18;  
415 b. What Happens if You Don't Cooperate at Inland  
416 Checkpoints?; Bates Nos. BRE 3219-23;  
417 c. Border Patrol Takes No for an Answer at Internal  
418 Checkpoints, dated March 7, 2013; Bates Nos. BRE  
419 3224-25;  
420 d. The Road to Nowhere (Near the Border), dated  
421 September 20, 2013; Bates Nos. BRE 3226-29;  
422 e. Border Patrol Checkpoints Stir Public Backlash, dated  
423 June 7, 2014; Bates Nos. BRE 3230-33;  
424 f. Arizona's Checkpoint Rebellion, dated July 20, 2014;  
425 Bates Nos. BRE 3234-47;  
426 g. The Border Between America and America, dated  
427 November 21, 2014; Bates Nos. BRE 3248-67;  
428 h. Checkpoints Push Buttons, Boundaries, dated December  
429 13, 2014; Bates Nos. BRE 3268-71;

- 430 i. Border Backlash, dated February 23, 2015; Bates Nos.  
431 BRE 3272-73;
- 432 j. Recording Abusive Border Patrol Conduct Becomes A  
433 Thing Among Fed-Up Americans, dated April 1, 2015;  
434 Bates Nos. BRE 3274-75;
- 435 k. Over the Line, Border Patrol's Obscure, Omnipresent  
436 100- Mile Zone; Bates Nos. BRE 3276-95;
- 437 l. Arizona's Checkpoint Wars, dated July 17, 2018; Bates  
438 Nos. BRE 3798-3800.
- 439
- 440 9. Documents regarding PCSD Ryan Roher:
- 441
- 442 a. Transcript of April 10, 2017, arrest transcribed by  
443 Plaintiff; Bates Nos. BRE 3398-413;
- 444 b. Transcript of Deposition of Ryan Roher taken on January  
445 25, 2018; Bates Nos. BRE 3414-499;
- 446 c. Incident Reports of PCSD Roher; Bates Nos. BRE 3500-  
447 571;
- 448 d. Incident Reports of PCSD Roher dated April 10, 2017;  
449 Bates Nos. BRE 3572-380;
- 450 e. Handwritten PCSD note regarding no training materials;  
451 Bates No. BRE 3798.
- 452
- 453 10. Documents regarding Stonegarden:
- 454
- 455 a. Stonegarden Arrests; Bates Nos. BRE 3581-617;
- 456 b. 2015 Stonegarden contract for equipment; Bates Nos.  
457 3618-36;
- 458 c. 2016 Stonegarden contract for equipment; Bates Nos.  
459 3637-57;
- 460 d. 2016 Stonegarden contract for equipment, second half of  
461 year; Bates Nos. 3658-82;
- 462 e. 2017 Stonegarden contract for equipment; Bates Nos.  
463 3683-707;
- 464 f. 2015 Stonegarden contract for overtime; Bates Nos.  
465 3708-26;
- 466 g. 2016 Stonegarden contract for overtime; Bates Nos.  
467 3727-  
468 47;

- 469 h. 2016 Stonegarden contract for overtime, second half of  
470 year; Bates Nos. 3748-72;
- 471 g. 2018 Stonegarden contract for overtime; Bates Nos.  
472 3773-97;
- 473 h. Board of Supervisor's Memorandum dated August 8,  
474 2018, regarding Fiscal Year 2018; Bates Nos. 3801-40.
- 475 i. Board of Supervisor's Memorandums (Parts 1 and 2)  
476 dated February 12, 2018, regarding Operation  
477 Stonegarden; Bates Nos. BRE 3861-98;
- 478 j. Pima County Sheriff's Department Memorandum dated  
479 February 15, 2018, regarding Operation Stonegarden;  
480 Bates Nos. BRE 3899-944;
- 481 k. County Administrator Memorandum dated June 15,  
482 2018, regarding Stonegarden and HIDTA grants; Bates  
483 Nos. BRE 3945-56;
- 484 l. County Administrator Memorandum dated August 27,  
485 2018, regarding the Operation Stonegarden status; Bates  
486 Nos. BRE 3957-59;
- 487 m. Pima County Sheriff's Department Memorandum dated  
488 August 31, 2018, regarding Stonegarden funding  
489 redistribution; Bates No. BRE 3960;
- 490 n. Board of Supervisor's Meeting Agenda for September 4,  
491 2018; Bates Nos. BRE 3961-77;
- 492 o. Board of Supervisor's Meeting Minutes for September 4,  
493 2018; Bates Nos. BRE 3978-90;
- 494 p. Video of Sheriff Napier's opening remarks at Board of  
495 Supervisor's meeting on February 20, 2018; Bates No.  
496 BRE 3991;
- 497 q. Video of Sheriff Napier's response to questions  
498 regarding deputies stationed at Border Patrol checkpoints  
499 at Board of Supervisor's meeting on February 20, 2018;  
500 Bates No. BRE 3992;
- 501 r. Partial transcript of Sheriff Napier's response to  
502 questions regarding deputies stationed at Border Patrol  
503 checkpoints at Board of Supervisor's meeting on  
504 February 20, 2018; Bates No. BRE 3993;
- 505 s. Partial transcript of Deputy McMillan's detention of  
506 Plaintiff on March 26, 2016; Bates No. BRE 3994.  
507

508 **D. For each of your claims or defenses, state the facts relevant**  
509 **to it and the legal theories upon which it is based.**

510

511 Plaintiff makes the following claims against Defendants:

512

513 1. Count I, Violation of First and Fourteenth Amendment Rights;  
514 42 U.S.C. § 1983.

515

516 On April 10, 2017, Plaintiff was exercising his First Amendment right

517 not to speak. Defendants Roher and Kunze were aware at all relevant times

518 that Plaintiff was exercising this First Amendment right not to speak, and

519 that Plaintiff had not moved from the checkpoint because law enforcement

520 officials refused to allow Plaintiff to continue down the highway without

521 first speaking on a topic about which Plaintiff desired not to speak.

522 Defendant Roher retaliated against Plaintiff by effectuating an arrest

523 in direct response to Plaintiff's unwillingness to speak on a topic about

524 which Plaintiff desired not to speak. Defendant Kunze ratified Defendant

525 Roher's retaliatory arrest. The exercise of Plaintiff's protected right was a

526 substantial and motivating factor for the Defendants' conduct and reveals

527 the intention to interfere with Plaintiff's First Amendment rights.

528 The First and Fourteenth Amendment right not to speak in this

529 particular context was clearly established as of April 10, 2017. Defendants

530 Roher and Kunze were acting under color of state law.

531 2. Count II, Violation of Fourth and Fourteenth Amendment  
532 Rights Pursuant to *City of Indianapolis v. Edmond*, 531 U.S. 32  
533 (2000).

534  
535 Pursuant to *Martinez-Fuerte v. United States*, 428 U.S. 543 (1976),  
536 and consistent with the Fourth Amendment, the United States Border Patrol  
537 has the legal authority to maintain the SR-86 checkpoint for the primary  
538 purpose of detecting and apprehending individuals unlawfully present in the  
539 United States. Also pursuant to *Martinez-Fuertes*, the United States Border  
540 Patrol has the legal authority to briefly seize, absent particularized  
541 suspicion, motorists passing through the SR-86 checkpoint for the limited  
542 purpose of asking one or two questions intended to confirm that the vehicle  
543 contains no unlawfully present aliens. On April 10, 2017, the United States  
544 Border Patrol operated the SR-86 checkpoint in such a manner that its  
545 primary purpose for operating the checkpoint on that particular day was for  
546 general law enforcement purposes.

547 Plaintiff was unlawfully seized and detained by the United States  
548 Border Patrol agents, as the Border Patrol had no particularized suspicion to  
549 believe that Plaintiff's vehicle contained aliens unlawfully present in the  
550 United States.

551 The Border Patrol on that particular day was operating the checkpoint  
552 in such a manner that its primary purpose was for detection of general



553 criminal wrongdoing rather than for the primary purpose of detecting and  
554 apprehending aliens unlawfully present in the United States. During the  
555 course of Plaintiff's seizure at the checkpoint, Border Patrol agents handed  
556 the law enforcement interaction over to Defendant Roher who was  
557 specifically assigned to work at the SR-86 checkpoint. This action  
558 evidences that the primary purpose of the SR-86 checkpoint on April 10,  
559 2017, was not the detection and apprehension of aliens unlawfully present in  
560 the United States.

561 Defendant Roher knowingly restrained the liberty of Plaintiff without  
562 particularized suspicion at a location that the Fourth Amendment authorized  
563 be done only by federal law enforcement agents for a limited immigration-  
564 related purpose. Defendant Roher did this without particularized suspicion  
565 despite the fact that Defendant Roher lacked the legal authority to  
566 investigate possible violations of federal immigration law, the only purpose  
567 for which the existence of the SR-86 checkpoint is authorized. Defendant  
568 Roher was acting under color of state law.

569 3. Count III, Violations of Fourth and Fourteenth Amendment  
570 Rights for Arrest Absent Probable Cause; 42 U.S.C. § 1983.

571

572 Absent particularized suspicion that a particular vehicle contains  
573 unlawfully present aliens or the vehicle's occupants are violating other

574 federal laws, the Border Patrol lacks legal authority to insist that a motorist  
575 move his or her vehicle to a secondary lane within the checkpoint area.

576 On April 10, 2017, United States Border Patrol agents and Defendant  
577 Roher insisted that Plaintiff move his vehicle into the secondary inspection  
578 lane of the SR-86 checkpoint without possessing particularized suspicion  
579 that Plaintiff's vehicle contained aliens unlawfully present in the United  
580 States and without particularized suspicion that Plaintiff had committed any  
581 state or federal crime for which Defendant Roher had legal authority to  
582 arrest.

583 Defendant Roher was aware that Border Patrol agents had found no  
584 particularized suspicion to continue detention of or to arrest Plaintiff.  
585 Defendant Roher was similarly unable to articulate any reasonable suspicion  
586 or probable cause to believe that Plaintiff had committed or was committing  
587 a state misdemeanor, felony or petty offense. Defendant Roher arrested  
588 Plaintiff for allegedly violating A.R.S. § 13-2906, (Obstructing a highway  
589 or other public thoroughfare), despite the fact that Defendant Roher had no  
590 probable cause to believe that Plaintiff committed or was committing such  
591 crime.

592 Defendant Kunze ratified Defendant Roher's actions and further  
593 prolonged the length of Plaintiff's arrest, despite the fact that Defendant

594 Kunze lacked probable cause to believe that Plaintiff committed any crime.

595 Defendants Roher and Kunze were acting under color of state law.

596 4. Count IV, Violation of 42 U.S.C. § 1983, Pursuant to *Monell* as  
597 Against Defendant Napier in His Official Capacity.

598

599 Defendant Sheriff Napier is a final policymaker over the County's

600 law enforcement matters and created a custom and practice of routinely

601 permitting PCSD deputies, including Defendant Roher, to serve entire work

602 shifts while stationed at the SR-86 checkpoint. This custom and practice

603 routinely put Pima County Sheriff's Deputies in a position of depriving

604 motorists of their constitutional rights under the Fourth and Fourteenth

605 Amendments by converting an already questionable Border Patrol

606 checkpoint devoted primarily to general law enforcement purposes into a

607 checkpoint unquestionably tipping into the unconstitutional zone, in clear

608 violation of *City of Indianapolis v. Edmond*. Defendant Napier's action

609 amounted to deliberate indifference of Plaintiff's constitutional rights.

610 5. Count V, Violation of 42 U.S.C. § 1983, Failure to Train as to  
611 Defendant Napier in His Individual Capacity and as to  
612 Defendants Dupnik, Nanos, Kunze, Doe Defendants 1-20, and  
613 Defendant Pima County Board of Supervisors.

614

615 Prior to April 10, 2017, there existed a pattern of similar

616 constitutional violations by similarly untrained employees of PCSD.

617 Defendants Pima County Board of Supervisors allowed the Pima County

618 Sheriff's Department to receive federal funding under Operation  
619 Stonegarden for more than a decade while failing to ensure proper training  
620 and policies were in place to handle usual and recurring situations that  
621 deputies would face while conducting Operation Stonegarden deployments  
622 on behalf of the United States Border Patrol.

623 Defendant Pima County Board of Supervisors were indifferent to the  
624 substantial risk of inadequate policies to prevent violations of law by its  
625 Sheriff's deputies. The failure to do so caused the deprivation of Plaintiff's  
626 constitutional rights.

627 Collectively, Defendants failed to train their deputies to handle usual  
628 and recurring situations. Defendants were indifferent to the substantial risk  
629 of inadequate policies to prevent violations of law by its deputies.

630 Defendants' failure to do so caused the deprivation of Plaintiff's  
631 constitutional right. Defendants could have prevented the constitutional  
632 violation of Plaintiff with an appropriate policy.

633 6. Count VI, Violation of 42 U.S.C. § 1983, Failure to Supervise,  
634 as to Defendant Napier in His Individual Capacity, and as to  
635 Defendants Dupnik, Nanos, Kunze, Doe Defendants 1-20, and  
636 Defendant Pima County Board of Supervisors.

637  
638 Defendants were acting under the color of state law and failed to  
639 properly supervise their deputies, depriving Plaintiff of his constitutional  
640 rights. Defendants personally knew that their subordinates were engaging in

641acts that deprived Plaintiff of his constitutional right. Defendants knew or  
642reasonably should have known that the subordinates conduct would deprive  
643Plaintiff of his constitutional rights. Defendants failed to act to prevent their  
644subordinates from engaging in such conduct. Defendants disregarded the  
645known or obvious consequences that a particular training deficiency would  
646cause subordinates to violate Plaintiff's constitutional rights, and this  
647deficiency did actually cause the subordinate to deprive Plaintiff of his  
648constitutional rights. Defendants engaged in conduct that showed a reckless  
649disregard to the deprivation by the subordinates of the rights of people such  
650as Plaintiff. The Defendants' conduct was so closely related to the  
651deprivation of Plaintiff's rights as to be the moving force that caused the  
652ultimate injury.

653       7.     Count VII, False Imprisonment as Against Defendants Roher  
654             and Kunze.

655  
656       On April 10, 2017, Plaintiff was falsely imprisoned by Defendant  
657Roher when he was handcuffed and prevented from leaving his location  
658outside of the SR-86 checkpoint.

659       The necessary elements to prove false imprisonment are: (1) the  
660defendant acted with intent to confine another person within boundaries  
661fixed by the defendant; (2) the defendant's act resulted in such confinement,  
662either directly or indirectly; and (3) the other person was conscious of the

663 confinement or was harmed by it. *See Hart v. Raynor*, 190 Ariz. 272, 281,  
664 947 P.2d 846, 855 (App. 1997). “Any restraint, however slight, upon  
665 another’s liberty to come and go as one pleases, *constitutes* an arrest.” *See*  
666 *Boies v. Raynor*, 89 Ariz. 257, 259, 361 P.2d 1, 2 (1961), *quoting Swetman*  
667 *v. F.W. Woolworth Co.*, 83 Ariz. 189, 192, 318 P.2d 364, 366 (1957).

668 Defendant Roher acted with intent and confined Plaintiff within a  
669 fixed boundary. Defendant Roher’s conduct resulted in the confinement of  
670 Plaintiff, without Plaintiff’s consent, and without probable cause or  
671 suspicion of any crime committed by Plaintiff. Plaintiff was conscious of  
672 the confinement inflicted upon him by Defendant Roher and confirmed by  
673 Defendant Kunze on April 10, 2017.

674 **D. Provide a computation of each category of damages claimed by**  
675 **you, and a description of the documents or other evidentiary**  
676 **material on which it is based, including materials bearing on the**  
677 **nature and extent of the injuries suffered. You may produce the**  
678 **documents or other evidentiary materials with your response**  
679 **instead of describing them.**

680  
681 Plaintiff has endured being needlessly stopped, detained, arrested, and  
682 prosecuted. Plaintiff has successfully defended the prior prosecution against  
683 him. Plaintiff estimates that he has been stopped approximately 423 times  
684 by Border Patrol agents and 4 times by Pima County Sheriff Deputies  
685 conducting Stonegarden deployments for the Border Patrol as of February  
686 2018, resulting in needless delays of approximately 40 hours. Additionally,

687 Plaintiff has had to spend countless hours defending himself against  
688 trumped up charges by Pima County Sheriff Deputies on 3 occasions since  
689 2013 and has spent thousands of dollars to do so. He now has a false arrest  
690 record created by law enforcement while retaliating against Plaintiff for  
691 protecting his First and Fourth Amendment rights. As a result of the  
692 pernicious harassment that has been ongoing for years, Plaintiff never  
693 knows what to expect while driving along SR86 and has suffered significant  
694 emotional distress.

695

696 **E. Specifically identify and describe any insurance or other**  
697 **agreement under which an insurance business or other person or**  
698 **entity may be liable to satisfy all or part of a possible judgment in**  
699 **the action or to indemnify or reimburse a party for payments**  
700 **made by the party to satisfy the judgment. You may produce a**  
701 **copy of the agreement with your response instead of describing it.**

702

703 Plaintiff is not aware of any personal insurance plan that would cover  
704 his damages in this matter.

705 **F. A party receiving the list described in Paragraph 3, the**  
706 **description of materials identified in Paragraph 5, or a**  
707 **description of agreements referred to in Paragraph 6 may request**  
708 **more detailed or thorough responses to these mandatory**  
709 **discovery requests if it believes the responses are deficient. A**  
710 **party may also serve requests pursuant to Rule 34 to inspect,**  
711 **copy, test or sample any or all of the listed or described items, to**  
712 **the extent not already produced in response to these mandatory**  
713 **discovery requests, or to enter onto designated land or other**  
714 **property identified or described.**

715

716

Plaintiff is serving a Rule 34 Request for Production upon all

717

Defendants in this action.

718

Dated this \_\_\_\_ day of \_\_\_\_\_ 2018.

719

720

Ralph E. Ellinwood, Attorney at Law, PLLC

721

722

723

/s/ Ralph E. Ellinwood

725

Ralph E. Ellinwood

726

Attorney for Plaintiff