

1Ralph E. Ellinwood
2Ralph E. Ellinwood,
3Attorney at Law, PLLC
4SBA: 3890
5PO Box 40158
6Tucson, AZ 85717
7Phone: (520) 413-2323
8Fax: (855) 817-6636
9ree@yourbestdefense.com

10
11
12
13

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 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,

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

PROPOSED SECOND AMENDED
COMPLAINT

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.

14
15
16
17
18
19
20
21
22
23
24
25
26

Plaintiff amends his First Amended Complaint as follows:

JURISDICTION AND VENUE

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

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

27 3. This Court has supplemental jurisdiction over the state law
28 claims against the County Defendants pursuant to 28 U.S.C. § 1367, as the
29 state law claim is so closely related to the claims arising under the U.S.
30 Constitution and federal statutes as to form part of the same case or
31 controversy.

32 4. This Court has authority to award injunctive and declaratory
33 relief pursuant to 28 U.S.C. §§ 1343, 2201, and 2202.

34 5. This Court has authority to award a reasonable attorneys' fees
35 pursuant to 42 U.S.C. § 1988(b).

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

39 **PARTIES**

40 6. At all times relevant herein, Plaintiff has been a United States
41 citizen.

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

44 8. Defendants Ryan Roher and Brian Kunze were, at all relevant
45 times, employees of the Pima County Sheriff's Department ("PCSD"). These

46 Defendants are hereafter referred to collectively as the “Individual County
47 Defendants.”

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

49 10. Defendant Napier was the Sheriff of Pima County on April 10,
50 2017.

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

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

55 13. Pursuant to *Monell v. Department of Social Services*, 436 U.S.
56 658 (1978), Sheriff Napier is a final policymaker of Pima County in the area
57 of law enforcement.

58 14. From January 2017 to the present time, Defendant Napier acted
59 under color of state law.

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

62 16. Defendant Christopher Nanos served as the Sheriff of Pima
63 County from August 2015 through December 31, 2016.

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

66 18. During his tenure as Sheriff, Defendant Nanos acted under color
67 of state law in relation to the acts and omissions alleged in this action.

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

72 20. Defendant Nanos is being sued in his individual capacity.

73 21. At all relevant times herein, the Individual County Defendants
74 were all sworn peace officers who were certified by Arizona Peace Officer
75 Standards & Training Board ("POST"), a nonprofit entity that was chartered
76 by the Arizona Legislature, receives annual state appropriations, and retains
77 exclusive authority to certify Arizona peace officers.

78 22. At all relevant times herein, the Individual County Defendants
79 were employed by PCSD as sworn peace officers.

80 23. By virtue of their certification as peace officers by POST and
81 their employment by PCSD, the Individual County Defendants had the
82 authority from the state of Arizona to enforce Arizona state criminal statutes.

83 24. At all times relevant herein, pursuant to A.R.S. § 13-3883, the
84 Individual County Defendants were clothed with state authority to effectuate

85 warrantless arrests for misdemeanor and felony crimes where probable cause
86 exists to believe the person arrested committed such crime.

87 25. At all relevant times herein, the Individual County Defendants
88 acted under color of state law.

89 26. Defendant Pima County Board of Supervisors is the legislative
90 body of Pima County, Arizona.

91 27. Pursuant to A.R.S. § 11-251, the Pima County Board of
92 Supervisors is vested with authority to “supervise the official conduct of all
93 county officers,” including that of the Sheriff.

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

97 29. Pursuant to A.R.S. § 11-201, the Pima County Board of
98 Supervisors is responsible for setting the budget of all elected county officers,
99 including that of the Sheriff.

100 30. Overall, the Pima County Board of Supervisors has several tools
101 available to it to prospectively redress ongoing constitutional violations
102 caused by the acts or omissions of the Sheriff.

103 31. The Pima County Board of Supervisors has the authority to
104 accept, reject, and condition federal grants offered to elected county officers,
105 including grants offered to the Sheriff.

106 32. Among the federal grants over which the Pima County Board of
107 Supervisors has authority to accept, reject, and condition is a federal grant
108 program referred to as “Operation Stonegarden,” (also sometimes referred to
109 as “OPSG”) which is central to Plaintiff’s constitutional deprivation at issue
110 in this action.

111 33. At various times relevant to this action, individual county
112 Defendants were supervised by employees of Defendant United States Border
113 Patrol, pursuant to the terms of the federal Operation Stonegarden grant
114 described in more detail below.

115 34. Defendant Department of Homeland Security (“DHS”) is a
116 Cabinet-level department that is responsible for the coordination and
117 unification of national security efforts. Defendant DHS consists of several
118 agencies, including United States Customs & Border Protection and United
119 States Border Patrol. DHS has authority over policies, procedures, and
120 practices relating to the operation of U.S. Border Patrol interior vehicle
121 checkpoints. Defendant DHS is sued as it relates to claims for declaratory and
122 prospective injunctive relief.

123 35. Defendant United States Customs & Border Protection (“CBP”)
124 is an agency within DHS. Defendant CBP has authority over policies,
125 procedures, and practices relating to the operation of Border Patrol interior
126 vehicle checkpoints. Defendant CBP is sued as it relates to claims for
127 declaratory and prospective injunctive relief.

128 36. Defendant Office of Border Patrol (“Border Patrol”) is a sub-
129 agency within CBP. Border Patrol is a federal law enforcement agency
130 responsible for the enforcement of federal immigration laws. Border Patrol
131 has responsibility for and oversight over policies, procedures, and practices
132 relating to the operation of Border Patrol interior vehicle checkpoints.
133 Defendant Border Patrol is sued as it relates to claims for declaratory and
134 prospective injunctive relief.

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

141 38. Defendant Kevin K. McAleenan is Commissioner of CBP. In
142 that capacity, Defendant McAleenan has authority over all CBP policies,

143 procedures, and practices relating to Border Patrol interior checkpoint
144 operations. Defendant McAleenan is sued in his official capacity as it relates
145 to claims for declaratory and prospective injunctive relief.

146 39. Defendant Carla L. Provost is Chief of the Border Patrol. In that
147 capacity, Defendant Provost has direct responsibility for and oversight over
148 Border Patrol policies, procedures, and practices relating to Border Patrol
149 interior checkpoint operations. Defendant Provost is sued in her official
150 capacity as it relates to claims for declaratory and prospective injunctive
151 relief.

152 40. Defendant Rodolfo Karisch is the Chief Patrol Agent for the
153 Tucson Sector of the Border Patrol. In that capacity, Defendant Karisch has
154 direct responsibility for and oversight over the Tucson Sector Border Patrol
155 policies, procedures, and practices relating to Border Patrol interior
156 checkpoint operations in the Tucson Sector. Defendant Karisch is sued in his
157 official capacity as it relates to claims for declaratory and prospective
158 injunctive relief.

159 41. Defendants DHS, CBP, Border Patrol, Nielsen, McAleenan,
160 Provost, and Karisch are collectively referred to herein as the “Federal
161 Defendants”.

162 42. Defendant United States of America is sued for Plaintiff's
163 personal injuries and harms caused by the negligent or wrongful acts or
164 omissions of its employees. Those employees were acting within the scope of
165 their office or employment with the federal government under circumstances
166 where the United States, if a private person, would be liable to Plaintiff in
167 accordance with the laws of the State of Arizona. *See* 28 U.S.C. § 1346(b).

168 **FACTUAL ALLEGATIONS**

169 **Arizona State Route 86 Checkpoint**

170 43. From 1993 to the present, Plaintiff has routinely traveled Arizona
171 State Route 86 (hereafter "SR-86") in Pima County, in the District of Arizona.

172 44. SR-86 is an east-west state highway that does not intersect the
173 United States/Mexico border at any point.

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

176 46. Between 2005 and 2007, Defendants CBP and Border Patrol
177 operated an interior checkpoint along SR-86 near milepost 145 in Pima
178 County, at irregular times and on irregular dates.

179 47. Between January 2008 and July 2010, Defendants CBP and
180 Border Patrol operated an interior checkpoint near milepost 145 on SR-86 in
181 Pima County.

182 48. In August 2010, Defendants CBP and Border Patrol began to
183 operate a checkpoint at milepost 146.5 on SR-86 in Pima County.

184 49. The checkpoint described at Paragraph 48 has operated
185 continuously at milepost 146.5 on SR-86 from 2010 to the present time.

186 50. The checkpoint described at Paragraph 48 is located in an
187 unincorporated portion of Pima County.

188 51. The checkpoint described in Paragraph 48 is located
189 approximately 49 air miles from the nearest point along the United
190 States/Mexico border.

191 52. SR-86 does not serve as the functional equivalent of the border.

192 53. The interior checkpoint described in Paragraph 48 is operated for
193 the primary purpose of general crime control.

194 54. Defendant CBP's and Defendant Border Patrol's primary
195 purpose for operating the interior checkpoint described at Paragraph 48 is not
196 to intercept unauthorized aliens.

197 55. The interior checkpoint described at Paragraph 48 is not a
198 sobriety checkpoint.

199 56. The interior checkpoint described at Paragraph 48 is not
200 conducted for the purpose of checking motorists' drivers' licenses.

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

204 58. The checkpoint described at Paragraph 48 is not conducted for
205 the purpose of verifying that motorists possess automobile insurance.

206 59. The checkpoint described at Paragraph 48 is not conducted for
207 the purpose of enforcing laws related to vehicle weight limits.

208 60. The checkpoint described at Paragraph 48 has as its primary
209 purpose the detection and interdiction of illegal narcotics.

210 61. During the six-month period from October 29, 2015, through
211 April 29, 2016, there were zero immigration-related arrests at the SR-86
212 checkpoint. During the same time period, there were six narcotic-related
213 arrests at the SR-86 checkpoint.

214 62. During the six-month period from April 29, 2016, through
215 October 29, 2016, there were 14 immigration-related arrests at the SR-86
216 checkpoint. During the same time period, there were 21 narcotics-related
217 arrests at the SR-86 checkpoint.

218 63. Since commencing routine and regular federal checkpoint
219 operations in 2008, Defendant Border Patrol has applied for and been granted

220 state highway encroachment permits from the Arizona Department of
221 Transportation (“ADOT”).

222 64. Under ADOT regulations, permits are required to be renewed on
223 an annual basis.

224 65. Prior to April 21, 2017, one of the terms of the encroachment
225 permit issued to Defendant Border Patrol for the SR-86 checkpoint is that the
226 checkpoint may be operated only at irregular times and on irregular dates.

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

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

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

236 69. According to an official website of the Department of Homeland
237 Security maintained at <https://www.cbp.gov/border-security/along-us->
238 [borders/](https://www.cbp.gov/border-security/along-us-borders/), the purpose of interior checkpoints is to: “(1) detect and apprehend

239 illegal aliens attempting to travel further into the interior of the United States
240 after evading detection at the border; and (2) to detect illegal narcotics.”

241 Plaintiff’s Interactions at the SR-86 Checkpoint

242 70. Between 2005 and February 2018, Plaintiff has passed through
243 the SR-86 checkpoint approximately 419 times.

244 71. Between March 2011 and February 2018, Plaintiff has passed by
245 the LPR system described in Paragraph 67 approximately 294 times.

246 72. At all times relevant herein, Plaintiff was driving his personal
247 vehicle.

248 73. Plaintiff’s personal vehicle was widely known to and recognized
249 by individual County and Federal Defendants as belonging to Plaintiff.

250 74. At all times relevant herein, Defendant Roher was aware that
251 Plaintiff is a U.S. citizen.

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

254 76. Plaintiff always traveled alone through the SR-86 checkpoint, a
255 fact of which employees of the Federal Defendants were aware. This action
256 was predictable to the Federal Defendants. As such, Plaintiff’s presence
257 traveling through the SR-86 checkpoint raised absolutely no suspicion of
258 criminal wrongdoing under federal laws.

259 77. Employees of the Federal Defendants have routinely seized
260 Plaintiff at the SR-86 checkpoint, despite knowing Plaintiff's identity and
261 citizenship and despite an absence of reasonable suspicion or probable cause
262 of criminal wrongdoing under federal laws.

263 78. Defendant Border Patrol routinely uses law enforcement K-9
264 units at the SR-86 checkpoint.

265 79. On occasion, PCSD allows Defendant Border Patrol to use PCSD
266 K-9 units.

267 80. Defendant Border Patrol trains its K-9 units to detect for the
268 scent of more than one type of illegal narcotic.

269 81. At all times relevant herein, Defendants Napier, Nanos, Roher,
270 and Kunze were personally aware that K-9 units operated by Defendant
271 Border Patrol at the SR-86 checkpoint were trained for and capable of
272 detecting the scent of narcotics.

273 82. On two occasions prior to April 10, 2017, Defendant Border
274 Patrol placed dogs in the bed of Plaintiff's pickup truck without lawful
275 excuse, and without Plaintiff's consent.

276 83. On several occasions, Defendant Border Patrol has detained
277 Plaintiff at the SR-86 checkpoint for the exclusive purpose of conducting a K-
278 89 drug-detection sniff around Plaintiff's vehicle.

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

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

286 Operation Stonegarden in Pima County

287 86. Since at least 2012, U.S. Border Patrol have conducted joint
288 operations with PCSD under a federal grant program known as "Operation
289 Stonegarden."

290 87. The stated purpose of Operation Stonegarden is to conduct "zero
291 tolerance" traffic contacts in certain portions of Pima County determined by
292 the U.S. Border Patrol to be areas of particular concern. This is sometimes
293 referred to as "saturation" within the law enforcement community, as the
294 purpose is to "saturate" a given geographic area with intensive traffic
295 enforcement during a given time period.

296 88. Operation Stonegarden is a federal grant program that pays
297 state, county, and local law enforcement agencies situated close to an

298 international border to work closely with the U.S. Border Patrol on federal
299 border security missions.

300 89. Operation Stonegarden provides federal grant dollars to local law
301 enforcement agencies, in part, to subsidize overtime wages of local law
302 enforcement officers who volunteer to work in excess of 40 hours per week
303 conducting joint missions with U.S. Border Patrol.

304 90. The Operation Stonegarden grant program does not confer any
305 federal immigration enforcement authority on state, county or local law
306 enforcement participants.

307 91. Neither Pima County nor PCSD has a joint memorandum of
308 agreement with the federal government under the program known as
309 “287(g)”, codified at 8 U.S.C. § 1357(g).

310 92. Nothing in federal law confers upon PCSD deputies the authority
311 to detain a motorist for the exclusive purpose of investigating potential civil
312 violations of federal immigration law.

313 93. Under the terms of Operation Stonegarden, PCSD must
314 coordinate its deployments with the U.S. Border Patrol.

315 94. Under the terms of Operation Stonegarden, the U.S. Border
316 Patrol retains authority to direct PCSD Deputies to certain locations, during

317 certain times, and with specific objectives determined by the Tucson Sector of
318 the U.S. Border Patrol.

319 95. During all times relevant herein, commanders employed by
320 Defendant Border Patrol routinely assigned PCSD deputies to the SR-86
321 checkpoint during Operation Stonegarden work shifts.

322 96. During all times relevant herein, during the times when PCSD
323 deputies were assigned by Defendant Border Patrol to the SR-86 checkpoint,
324 such deputies frequently would park their PCSD patrol vehicle on the
325 shoulder of SR-86 alongside official U.S. Border Patrol vehicles.

326 97. During all times relevant herein, employees of Defendant Border
327 Patrol routinely allowed PCSD deputies to operate at the SR-86 checkpoint
328 regardless of whether or not the deputies had been explicitly assigned there as
329 part of the Operation Stonegarden grant program.

330 98. During all times relevant herein, employees of Defendant Border
331 Patrol who are assigned to work at the SR-86 checkpoint have allowed and
332 encouraged PCSD deputies to engage in general law enforcement operations
333 at the SR-86 checkpoint.

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

336 100. During all times relevant herein, PCSD deputies routinely issued
337 state law traffic citations to motorists while they were temporarily seized at
338 the SR-86 checkpoint.

339 101. During all times relevant herein, PCSD deputies routinely issued
340 state law traffic citations at the SR-86 checkpoint to motorists who had
341 already been determined by U.S. Border Patrol agents to possess lawful
342 immigration status.

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

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

351 104. When assigned to the SR-86 checkpoint, a PCSD Deputy
352 routinely issues, on average, a larger number of state law traffic citations
353 during an 8-hour shift than he/she issues when patrolling for the same amount
354 of time on portions of the open highways.

355 105. During one 8-hour work shift while assigned to the SR-86
356 checkpoint, Defendant Roher issued state law traffic citations to
357 approximately thirty (30) different motorists who passed through the SR-86
358 checkpoint.

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

363 107. For example, on April 10, 2017, (the same day on which
364 Defendant's underlying constitutional deprivations occurred) Defendant
365 Roher observed that a vehicle in line at the SR-86 checkpoint had a long crack
366 in its windshield, which is a vehicle equipment violation under Arizona state
367 law.

368 108. As the vehicle entered the primary lane of the SR-86 checkpoint,
369 Defendant Roher asked the U.S. Border Patrol agent to refer the vehicle to the
370 secondary lane within the Border Patrol checkpoint area.

371 109. Once in the secondary lane, Defendant Roher found that the
372 driver's license had been suspended and proceeded to issue a state law
373 citation to the driver and have the vehicle towed.

374 110. Defendants Roher and Kunze were both earning overtime wages
375 on April 10, 2017, pursuant to PCSD's participation in the Operation
376 Stonegarden program.

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

380 112. The PCSD deputies called to the scene on these occasions were
381 conducting Operation Stonegarden deployments in collaboration with the U.S.
382 Border Patrol.

383 113. Defendant Pima County Board of Supervisors is authorized to
384 approve each Operation Stonegarden grant award.

385 114. On February 16, 2016, Defendant Pima County Board of
386 Supervisors approved the receipt of Operation Stonegarden funding to be
387 distributed to PCSD. They approved such funding without qualification or
388 conditions.

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

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

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

398 Training and Supervision of Pima County Sheriff's Deputies

399 118. At all times relevant herein, PCSD did not have internal
400 regulations, rules, guidelines, directives, written guidance, or protocols
401 pertaining to Operation Stonegarden deployments.

402 119. At all times relevant herein, PCSD did not have internal
403 regulations, rules, guidelines, directives, written guidance, or protocols
404 pertaining to deputies who stationed themselves at a U.S. Border Patrol
405 checkpoint.

406 120. At all times relevant herein, PCSD did not offer Operation
407 Stonegarden training to its deputies.

408 121. Upon information and belief, PCSD used none of the federal
409 Operation Stonegarden grant funding it received in 2016 and 2017 to develop
410 or disseminate specialized training to those of its sworn deputies participating
411 in Operation Stonegarden deployments.

412 122. With the exception of issues related to deployments at
413 international ports of entry, at all times relevant herein, the U.S. Border Patrol
414 did not share with PCSD any training materials related to the proper execution
415 of Operation Stonegarden deployments.

416 123. At all times relevant herein, the U.S. Border Patrol did not share
417 with PCSD any training materials related to proper law enforcement functions
418 at Border Patrol checkpoints.

419 124. Upon information and belief, at all times relevant herein, PCSD
420 did not disseminate to any of its deputies any training materials related to the
421 U.S. Supreme Court's decision in *Martinez-Fuerte v. United States*, 428 U.S.
422 543 (1976).

423 125. Upon information and belief, at all times relevant herein, PCSD
424 did not disseminate to any of its deputies any training materials related to the
425 U.S. Supreme Court's decision in *City of Indianapolis v. Edmond*, 531 U.S.
426 32 (2000).

427 126. At all times relevant herein, PCSD deputies routinely
428 participated in Operation Stonegarden deployments at the SR-86 checkpoint
429 without having received training specific to Border Patrol checkpoints.

430 127. At all times relevant herein, Defendant Roher did not receive
431 training specific to Border Patrol checkpoints.

432 128. At all times relevant herein, with the exception of deployments
433 taking place at international ports of entry, PCSD permitted its deputies to
434 conduct Operation Stonegarden deployments without undergoing special or
435 additional training.

436 129. Defendant Nanos took no steps during his tenure to develop or
437 promulgate internal rules, regulations, guidelines, guidance, protocols or
438 directives related to Operation Stonegarden.

439 130. Defendant Nanos took no steps during his tenure to develop or
440 promulgate internal rules, regulations, guidelines, guidance, protocols or
441 directives related to PCSD duties while stationed at Border Patrol
442 checkpoints.

443 131. Prior to 2018, Defendant Napier took no steps to develop or
444 disseminate training materials related to Operation Stonegarden.

445 132. Prior to 2018, Defendant Napier took no steps to develop or
446 disseminate training materials related to PCSD duties while stationed at
447 Border Patrol checkpoints.

448 133. Prior to 2018, Defendant Napier took no steps to develop internal
449 policies, rules, regulations, protocols, guidelines, guidance, protocols or
450 directives related to Operation Stonegarden.

451 134. Prior to 2018, Defendant Napier took no steps to develop internal
452 policies, rules, regulations, protocols, guidelines, protocols or directives
453 related to PCSD duties while stationed at Border Patrol checkpoints.

454 135. PCSD maintains a document issued to some of its employees
455 called the “Pima County Sheriff’s Department Rules and Regulations
456 Manual.” The current document is available at: [https://www.pimasheriff.org/
457 about-us/rules-and-regulations/](https://www.pimasheriff.org/about-us/rules-and-regulations/).

458 136. The document described in Paragraph 135 is designed to guide
459 members of the Pima County Sheriff’s Department in carrying out the duties,
460 responsibilities, and obligations set forth by law, or assumed by them, in order
461 to fulfill the mission of the Department.

462 137. Upon information and belief, PCSD, under the direction of the
463 Sheriff, undertakes an annual review of the document described in Paragraph
464 135 to ensure that the document reflects the latest developments in the law.

465 138. As of December 31, 2018, the current version of the document
466 described in Paragraph 135 consists of approximately 400 pages.

467 139. On April 10, 2017, the then-operative version of the document
468 described in Paragraph 135 provided instructions and guidance related to the
469 proper operation of a sobriety checkpoint.

470 140. Pursuant to the document described in Paragraph 135, PCSD
471deputies who participate in sobriety checkpoints are required to attend an
472“operation specific briefing” prior to their participation in said checkpoint.

473 141. PCSD requires no “operation specific briefing” of PCSD
474deputies planning to participate in Operation Stonegarden deployments at
475Border Patrol checkpoints.

476 142. On April 10, 2017, the then-operative version of the document
477described in Paragraph 135 nowhere mentioned Border Patrol checkpoints.

478 143. On April 10, 2017, the then-operative version of the document
479described in Paragraph 135 nowhere mentioned Operation Stonegarden.

480 144. Upon information and belief, between 2008 and 2017, neither
481Defendant Nanos nor Defendant Napier undertook or directed their
482subordinates to undertake any review of the document described in Paragraph
483135 for the purpose of ensuring that PCSD operations at Border Patrol
484checkpoints were consistent with current law.

485 145. Upon information and belief, at all times relevant herein,
486Defendants Nanos and Napier were on notice that their deputies were
487regularly undertaking general law enforcement efforts while positioned
488directly at Border Patrol checkpoints located in unincorporated portions of
489Pima County.

490 146. Upon information and belief, during all times relevant herein,
491 Defendants Nanos, and Napier were personally aware that certain motorists
492 had been cited by PCSD deputies for state law traffic violations while PCSD
493 deputies were positioned at the SR-86 checkpoint.

494 147. Upon information and belief, prior to Plaintiff's arrest on April
495 10, 2017, subordinates of Defendant Napier, including at least one of the
496 Chiefs of PCSD, were personally familiar with Plaintiff and were personally
497 familiar with his interactions with PCSD deputies at the SR-86 checkpoint.

498 April 10, 2017 Incident at SR-86 Checkpoint

499 148. On three occasions since 2013, Plaintiff was cited under state law
500 at the SR-86 checkpoint by PCSD Deputies who were working in
501 collaboration with Defendant Border Patrol pursuant to the terms of Operation
502 Stonegarden.

503 149. The most recent of those occasions was on April 10, 2017, the
504 subject of this lawsuit.

505 150. On April 10, 2017, Plaintiff was traveling eastbound on SR-86
506 and came upon the SR-86 interior checkpoint.

507 151. Plaintiff slowed down and brought his vehicle to a complete stop,
508 as indicated by the traffic signs maintained by Defendant Border Patrol.

509 152. Plaintiff lowered his window slightly to enable himself to hear
510 the instructions from the Border Patrol agent on duty at the checkpoint.

511 153. Agent Frye, an employee of Defendant Border Patrol, asked
512 Plaintiff to declare whether or not Plaintiff is a U.S. citizen.

513 154. In exercising his First Amendment right not to speak, Plaintiff
514 declined to declare his citizenship status.

515 155. Plaintiff's choice not to speak was a deliberate choice not to
516 express an ideological viewpoint with which Plaintiff disagrees. In particular,
517 Plaintiff's decision not to speak to Agent Frye was a decision to not
518 acknowledge or bear witness to a government activity with which Plaintiff
519 disagrees – the maintenance and operation of unlawful interior checkpoints.
520 In short, Plaintiff's silence was a pointed expression of anguish about the
521 current domestic affairs of his government.

522 156. As a direct result of Plaintiff's choice not to declare his
523 citizenship status, Agent Frye indicated to Plaintiff that Plaintiff was not free
524 to leave and was not free to proceed down the highway.

525 157. Accordingly, Plaintiff remained seated in the driver's seat of his
526 vehicle and remained at a complete stop within the confines of the SR-86
527 Border Patrol checkpoint.

528 158. After approximately 80 seconds of Plaintiff being detained by
529 Agent Frye at the checkpoint, Agent Frye asked another agent on the South
530 side of the checkpoint where the supervisor went.

531 159. A few seconds later, Defendant Roher began approaching the
532 scene by foot from where he had been stationed on the South side of the
533 checkpoint's primary stop location.

534 160. At the time, Defendant Roher was working an eight-hour
535 Operation Stonegarden shift.

536 161. At this moment, Defendant Roher assumed control of the law
537 enforcement interaction with Plaintiff.

538 162. Upon taking over the law enforcement interaction with Plaintiff,
539 Defendant Roher learned from Agent Frye that he had refused to allow
540 Plaintiff to proceed down the highway because Plaintiff had not yet declared
541 his citizenship status.

542 163. Defendant Roher then explained to Plaintiff that Plaintiff needed
543 to answer Agent Frye's immigration questions.

544 164. When Defendant Roher continued detaining Plaintiff in the lane
545 of traffic, Plaintiff asked Defendant Roher what law he thought Plaintiff was
546 violating.

547 165. In response, Defendant Roher indicated Plaintiff could leave the
548 checkpoint.

549 166. The total elapsed time that Defendant Roher detained Plaintiff at
550 the same spot where Plaintiff had initially come to a complete stop while
551 being detained by Agent Frye was approximately 64 seconds.

552 167. Plaintiff immediately complied with Defendant Roher's
553 instruction to leave the checkpoint and began to drive down the highway.

554 168. While beginning to accelerate away from the Border Patrol
555 checkpoint, Plaintiff glanced in his mirror and immediately noticed that
556 Defendant Roher was running toward his PCSD patrol vehicle.

557 169. Plaintiff interpreted this movement by Defendant Roher as a
558 clear indication that Defendant Roher intended to effectuate a traffic stop on
559 Plaintiff.

560 170. Plaintiff then pulled his vehicle to the right shoulder of SR-86,
561 several dozen yards east of the Border Patrol checkpoint.

562 171. Defendant Roher got into his PCSD patrol vehicle and drove
563 several dozen yards to where Plaintiff was now parked on the right-hand
564 shoulder of SR-86.

565 172. Plaintiff remained seated in the driver seat of his vehicle, and
566 Defendant Roher exited his PCSD patrol vehicle and approached Plaintiff's
567 driver-side window.

568 173. Defendant Roher requested Plaintiff to exit his vehicle.

569 174. When Plaintiff requested to know whether he was being
570 detained, Defendant Roher ordered Plaintiff out of his vehicle without
571 answering the question.

572 175. Plaintiff exited his vehicle.

573 176. Defendant Roher requested Plaintiff to provide his photo
574 identification.

575 177. Plaintiff handed his photo identification to Defendant Roher,
576 asked him who his supervisor was, and asked him to call his supervisor to the
577 scene.

578 178. After failing to answer some of Defendant Roher's questions,
579 Defendant Roher arrested and handcuffed Plaintiff.

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

582 180. After effectuating the arrest, Defendant Roher revealed to
583 Plaintiff that he had been familiar with Plaintiff prior to that day and knew

584 that Plaintiff passed through the SR-86 checkpoint on a somewhat regular
585 basis.

586 181. Defendant Roher revealed to Plaintiff that he was familiar with
587 Plaintiff's ideological views regarding Border Patrol checkpoints.

588 182. Defendant Roher revealed to Plaintiff that he was aware that
589 Plaintiff was delayed in the lane of traffic at the Border Patrol checkpoint
590 because a federal agent was detaining him there.

591 183. While Plaintiff was still in handcuffs, Defendant Kunze arrived
592 to the scene. Defendant Kunze ratified Defendant Roher's decision to arrest
593 Plaintiff.

594 184. Months following the April 10, 2017 arrest, Defendant Roher
595 admitted to discussing Plaintiff with Border Patrol employees prior to April
596 10, 2017.

597 185. On or about September 27, 2017, through a process server,
598 Plaintiff served Notices of Claim pursuant to A.R.S. § 12-821.01, to
599 Defendant Pima County Board of Supervisors; Defendant Pima County
600 Sheriff's Department; Defendant Pima County Sheriff Mark Napier;
601 Defendant Pima County Deputy Ryan Roher; and Defendant Pima County
602 Deputy Brian Kunze.

603

604 CLAIMS FOR RELIEF

605 **COUNT I**

606 **Violations of First and Fourteenth Amendment Rights (Free Speech)**
607 **Against all County and Federal Defendants**

608 -
609 186. Plaintiff hereby realleges and incorporates by reference the

610 allegations contained in paragraphs 1-185 as though fully set forth herein.

611 187. The actions of County and Federal Defendants, as set forth

612 above, violated Plaintiff's right to freedom of speech guaranteed by the First

613 Amendment to the Constitution and applicable to the county Defendants

614 through the Fourteenth Amendment to the Constitution. Defendants, through

615 the acts described above, acted to eliminate and chill Plaintiff's exercise of his

616 right to speak and, by extension, his right not to speak.

617 188. Plaintiff's choice not to speak on April 10, 2017, was a deliberate

618 choice not to express an ideological viewpoint with which Plaintiff disagrees.

619 In particular, Plaintiff's decision not to speak at the SR-86 checkpoint was a

620 decision to not acknowledge or bear witness to a government activity with

621 which Plaintiff disagrees – the maintenance and operation of unlawful interior

622 checkpoints. Plaintiff's silence was a pointed expression of anguish about the

623 current domestic affairs of his government.

624 189. Since April 10, 2017, Plaintiff has continued to exercise his First

625 and Fourteenth Amendment rights at the SR-86 checkpoint.

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

628 191. As a proximate result of the wrongful and malicious acts of
629 Defendants, Plaintiff has suffered compensable and irreparable injuries
630 including having his right to engage in the constitutionally protected activity
631 of ideological speech truncated, extinguished, and/or deprived him.

632 192. At all times relevant herein, the County Defendants were acting
633 under the color of state law in their causing the deprivation of Plaintiff's First
634 and Fourteenth Amendment rights.

635 193. Plaintiff has suffered, and continues to suffer, harm as a direct
636 result of the First Amendment retaliatory arrest effectuated by the Individual
637 County Defendants on April 10, 2017. Plaintiff reasonably fears that all
638 Defendants are likely to continue to chill Plaintiff's First Amendment rights at
639 the SR-86 checkpoint. In fact, the Federal Defendants have truncated and
640 attempted to chill Plaintiff's First Amendment rights since April 10, 2017, at
641 the SR-86 checkpoint.

642 194. Absent intervention by this Court, Defendants are almost certain
643 to continue to deprive Plaintiff of his First Amendment rights at the SR-86
644 checkpoint.

645 195. Plaintiff seeks compensatory damages pursuant to 42 U.S.C. §
6461983 under this Claim, as against the County Defendants. Additionally,
647Plaintiff seeks declaratory and injunctive relief under this Claim, as against
648the County and Federal Defendants.

649 **COUNT II**
650 **Violation of Fourth and Fourteenth Amendment Rights Within the**
651 **Checkpoint Primary Inspection Lane (*City of Indianapolis v. Edmond*)**
652 **Against all County and Federal Defendants**
653

654 196. Plaintiff hereby realleges and incorporates by reference the
655allegations contained in paragraphs 1-195 as though fully set forth herein.

656 197. The United States Supreme Court has clarified the lawful scope
657and purpose of interior checkpoints in *United States v. Martinez-Fuerte*, 428
658U.S. 543 (1976) and *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S. Ct.
659447 (2000). Checkpoints operated with the primary purpose of detecting
660illegal narcotics and/or ordinary criminal wrongdoing, and which result in the
661temporary seizure of motorists absent individualized suspicion, are violative
662of the Fourth Amendment.

663 198. Consistent with the Fourth Amendment, the Federal Defendants
664have the legal authority to maintain the SR-86 checkpoint for the primary
665purpose of detecting and apprehending individuals unlawfully present in the
666United States.

667 199. The Federal Defendants have the legal authority to briefly seize
668 motorists passing through the SR-86 checkpoint to allow federal agents to ask
669 one or two questions intended to confirm that the vehicle contains no
670 unlawfully present aliens. Such legal authority exists; however, only if the
671 checkpoint conforms with the Fourth Amendment requirements articulated in
672 *Martinez-Fuerte* and *City of Indianapolis v. Edmond*. The SR-86 checkpoint
673 does not conform to those requirements.

674 200. The Federal Defendants' lawful authority to briefly seize
675 motorists at the SR-86 checkpoint without individualized suspicion is
676 contingent upon the Federal Defendants' maintaining such checkpoint for the
677 primary purpose of enforcing the nation's immigration laws.

678 201. The Federal Defendants' primary purpose for operating the SR-
679 86 checkpoint is not to detect and apprehend aliens who are unlawfully
680 present in the United States, or to otherwise enforce the nation's immigration
681 laws.

682 202. On April 10, 2017, the Federal Defendants operated the SR-86
683 checkpoint in such a manner that the checkpoint's primary purpose was to
684 detect general criminal wrongdoing.

685 203. On April 10, 2017, the County Defendants collaborated with the
686 Federal Defendants in such a way that the primary purpose of the SR-86

687 checkpoint was not the enforcement of federal immigration laws but rather the
688 detection of general criminal wrongdoing.

689 204. The County Defendants, independent of their Federal Defendant
690 partners, possess an independent legal obligation to conduct their state-law
691 law enforcement duties in such a manner that does not run afoul of the
692 principles of *City of Indianapolis v. Edmond*.

693 205. On April 10, 2017, and on many occasions since that date,
694 Plaintiff was unlawfully seized by Defendants at the primary inspection lane
695 of the SR-86 checkpoint. These unlawful seizures in the primary inspection
696 lane resulted from Defendants' operation of the checkpoint for a primary
697 purpose not countenanced by the Fourth Amendment.

698 206. The unlawful conditions of the SR-86 checkpoint, as they existed
699 on April 10, 2017, continue to exist at the SR-86 checkpoint today. To the
700 extent that certain conditions existing on April 10, 2017, at the SR-86
701 checkpoint are no longer present, both County and Federal Defendants are
702 capable of resuming such conditions at a moment's notice and without the
703 rigors of legislative or administrative rulemaking processes. Absent
704 intervention by this Court, it is likely that Plaintiff will continue to be
705 unlawfully seized by County and Federal Defendants within the primary

706 inspection lane of the SR-86 checkpoint, in violation of the principles of
707 *Martinez-Fuerte* and *City of Indianapolis v. Edmond*.

708 207. Plaintiff seeks declaratory and injunctive relief as to this Claim,
709 as against all Defendants, pursuant to the Fourth Amendment principles
710 established in *City of Indianapolis v. Edmond*.

711 **COUNT III**
712 **Violation of Fourth and Fourteenth Amendment Rights for Arrest**
713 **Absent Probable Cause**
714 **Against Defendants Roher and Kunze**

715
716 208. Plaintiff hereby realleges and incorporates by reference the
717 allegations contained in paragraphs 1-207 as though fully set forth herein.

718 209. On April 10, 2017, Defendant Roher, aware that agents with the
719 U.S. Border Patrol had found no particularized suspicion to continue the
720 detention of or to arrest Plaintiff, effectuated an arrest of Plaintiff purportedly
721 under the state law authority granted to him as an Arizona peace officer.

722 210. Leading up to, during, and after the arrest, Defendant Roher was
723 unable to articulate any reasonable suspicion or probable cause to believe that
724 Plaintiff had committed or was committing a state misdemeanor, felony, or
725 petty offense.

726 211. Defendant Roher arrested Plaintiff for allegedly violating A.R.S.
727 § 13-2906 (Obstructing a highway or other public thoroughfare), despite the

728 fact that Defendant Roher had no probable cause to believe that Plaintiff
729 committed or was committing such crime.

730 212. Defendant Kunze ratified Defendant Roher's actions and further
731 prolonged the length of Plaintiff's arrest, despite the fact that neither
732 Defendant Kunze nor Defendant Roher had probable cause to believe that
733 Plaintiff committed any crime.

734 213. At all relevant times, Defendants Roher and Kunze were acting
735 under color of state law.

736 214. Plaintiff's right to be free from arrest absent probable cause to
737 believe that he committed or was committing a crime was clearly established
738 as of April 10, 2017.

739 215. Under this Count, Plaintiff seeks damages pursuant to 42 U.S.C.
740 § 1983 against Defendants Roher and Kunze, for effectuating and
741 subsequently ratifying Plaintiff's arrest, without probable cause to believe that
742 Plaintiff committed or was committing a crime.

743 **COUNT IV**
744 **Violation of Constitutional Rights Pursuant to *Monell v. New York City***
745 ***Department of Social Services***
746 **Against Defendant Napier, in his Official Capacity**

747 216. Plaintiff hereby realleges and incorporates by reference the
748 allegations contained in paragraphs 1-215 as though fully set forth herein.

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

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

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

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

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

767

768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789

COUNT V
Failure to Train, 42 U.S.C. § 1983
Against Defendant Napier in his Individual Capacity, and Against
Defendants Nanos, Kunze, and Pima County Board of Supervisors

222. Plaintiff hereby realleges and incorporates by reference the allegations contained in paragraphs 1-221 as though fully set forth herein.

223. Prior to April 10, 2017, there existed a pattern of similar constitutional violations by similarly untrained employees of PCSD performing law enforcement duties at the SR-86 checkpoint and at other checkpoints operated by the Border Patrol within the unincorporated portions of Pima County.

224. Defendant Pima County Supervisors failed to enforce or otherwise encourage proper training of the Pima County Sheriff's Department deputies and, therefore, failed to adequately train their deputies to handle usual and recurring situations.

225. Defendants failed to train their deputies to handle usual and recurring situations.

226. Defendants were indifferent to the substantial risk of inadequate training to prevent violations of law by its deputies.

227. Defendants' failure to train was the proximate cause of the deprivation of Plaintiff's constitutional rights.

790 228. Defendants could have prevented the constitutional violation of
791 Plaintiff with an appropriate training.

792 229. As a result, Plaintiff has been injured and is entitled to damages.

793 **COUNT VI**
794 **Failure to Supervise, 42 U.S.C. § 1983**
795 **Against Defendant Napier in his Individual Capacity, and Against**
796 **Defendants Nanos, Kunze, and Pima County Board of Supervisors**
797

798 230. Plaintiff hereby realleges and incorporates by reference the
799 allegations contained in paragraphs 1-229 as though fully set forth herein.

800 231. Defendants Napier, Nanos, Kunze, and Pima County Board of
801 Supervisors were acting under the color of state law at all times relevant
802 herein.

803 232. Defendants failed to properly supervise their deputies, thereby
804 depriving Plaintiff of his constitutional rights.

805 233. Defendants knew or reasonably should have known that their
806 subordinates were engaging in acts that deprived Plaintiff (and other
807 motorists) of their constitutional rights.

808 234. Defendants knew or reasonably should have known that the
809 subordinates' conduct would deprive Plaintiff of his constitutional rights.

810 235. Defendants failed to act to prevent their subordinates from
811 engaging in such conduct.

812 236. Defendants disregarded the known or obvious consequences that
813a deficiency in adequate supervision would cause the subordinates to violate
814Plaintiff's constitutional rights.

815 237. Such deficiency did actually cause the subordinates to deprive
816Plaintiff of his constitutional rights.

817 238. Defendants engaged in conduct that showed a reckless disregard
818to the deprivation by the subordinates of the rights of people such as Plaintiff.

819 239. The Defendants' conduct was so closely related to the
820deprivation of Plaintiff's rights as to be the moving force that caused the
821ultimate injury.

822 240. As a result, Plaintiff has been injured and is entitled to damages.

823 **COUNT VII**
824 **False Imprisonment, Arizona State Law**
825 **Against Defendants Roher and Kunze**
826

827 241. Plaintiff hereby realleges and incorporates by reference the
828allegations contained in paragraphs 1-240 as though fully set forth herein.

829 242. On April 10, 2017, Plaintiff was falsely imprisoned by Defendant
830Roher when he was handcuffed and prevented from leaving his location
831outside of the SR-86 checkpoint.

832 243. The necessary elements of false imprisonment under Arizona law
833are: (1) the defendant acted with intent to confine another person within

834 boundaries fixed by the defendant; (2) the defendant's act resulted in such
835 confinement, either directly or indirectly; and (3) the other person was
836 conscious of the confinement or was harmed by it. *See Hart v. Raynor*, 190
837 Ariz. 272 (App. 1997); *Boies v. Raynor*, 89 Ariz. 257 (1961).

838 244. Defendant Roher acted with intent and confined Plaintiff within a
839 fixed boundary, at the side of State Route 86.

840 245. Plaintiff did not consent to such confinement.

841 246. Defendant Roher's conduct resulted in the confinement of
842 Plaintiff, without probable suspicion of any crime or state traffic violation
843 committed by Plaintiff.

844 247. In confining Plaintiff without Plaintiff's consent, Defendant
845 Roher acted outside the scope of the warrantless arrest authority conferred
846 upon him by Title 13 and Title 41 of Arizona Revised Statutes.

847 248. Plaintiff was conscious of the confinement inflicted upon him by
848 Defendant Roher on April 10, 2017.

849 249. Defendant Kunze ratified and acquiesced to the actions that
850 Defendant Roher took in confining Plaintiff. Defendant Kunze had the
851 authority and ability to reverse or otherwise halt the unlawful actions of
852 Defendant Roher.

853 250. Plaintiff has been damaged and is entitled to monetary damages.

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

855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875

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

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

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

254. Plaintiff did not consent to such confinement.

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

876 256. The conduct of employees of Defendant United States of
877 America resulted in the confinement of Plaintiff, without probable suspicion
878 of any crime, state traffic violation, or civil immigration violation under
879 federal law.

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

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

884 **REQUEST FOR RELIEF**

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

- 886 1. Declaratory relief concerning the unconstitutionality of
887 Defendants' actions as described herein and as outlined in
888 Counts I and II.
- 889 2. A preliminary and permanent injunction prohibiting
890 Defendants from engaging in any of the unconstitutional
891 behaviors as described herein and as outlined in Counts I and II;
892 and to put into place safeguards sufficient to ensure that these
893 constitutional violations do not continue in the future;
- 894 3. Compensatory, general, statutory, and special damages in
895 an amount according to proof;

896
897
898
899
900
901
902
903
904
905
906

4. Attorneys' fees and costs, and costs of suit, as provided by 42 U.S.C. § 1988, and any other applicable authority;
5. Such other relief as this Court deems appropriate.

Dated this 31st day of December, 2018.

Ralph E. Ellinwood, Attorney at Law, PLLC

/s/ Ralph E. Ellinwood
Ralph E. Ellinwood
Attorney for Plaintiff