

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

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

Terrence Bressi,

Plaintiff,

vs.

(1) Pima County Sheriff Mark
Napier, in his individual and official
capacities;
(2) Pima County Board of
Supervisors;
(3) Former Pima County Sheriff
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;

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

PROPOSED SECOND AMENDED
COMPLAINT

(9) Kevin K. McAleenan, Acting Secretary, United States Department of Homeland Security, in his official capacity;
 (10) John P. Sanders, Acting 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.

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.

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

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

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

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

13 **PARTIES**

14 6. At all times relevant herein, Plaintiff has been a United States
15 citizen.

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

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

1 Defendants are hereafter referred to collectively as the “Individual County
2 Defendants.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 26. Defendant Pima County Board of Supervisors is the legislative
6 body of Pima County, Arizona.

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

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

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

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

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

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

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

13 34. Defendant Department of Homeland Security (“DHS”) is a
14 Cabinet-level department that is responsible for the coordination and
15 unification of national security efforts. Defendant DHS consists of several
16 agencies, including United States Customs & Border Protection and United
17 States Border Patrol. DHS has authority over policies, procedures, and
18 practices relating to the operation of U.S. Border Patrol interior vehicle
19 checkpoints. Defendant DHS is sued as it relates to claims for declaratory and
20 prospective injunctive relief.

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

6 36. Defendant Office of Border Patrol (“Border Patrol”) is a sub-
7 agency within CBP. Border Patrol is a federal law enforcement agency
8 responsible for the enforcement of federal immigration laws. Border Patrol
9 has responsibility for and oversight over policies, procedures, and practices
10 relating to the operation of Border Patrol interior vehicle checkpoints.
11 Defendant Border Patrol is sued as it relates to claims for declaratory and
12 prospective injunctive relief.

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

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

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

4 39. Defendant Carla L. Provost is Chief of the Border Patrol. In that
5 capacity, Defendant Provost has direct responsibility for and oversight over
6 Border Patrol policies, procedures, and practices relating to Border Patrol
7 interior checkpoint operations. Defendant Provost is sued in her official
8 capacity as it relates to claims for declaratory and prospective injunctive
9 relief.

10 40. Defendant Rodolfo Karisch is the Chief Patrol Agent for the
11 Tucson Sector of the Border Patrol. In that capacity, Defendant Karisch has
12 direct responsibility for and oversight over the Tucson Sector Border Patrol
13 policies, procedures, and practices relating to Border Patrol interior
14 checkpoint operations in the Tucson Sector. Defendant Karisch is sued in his
15 official capacity as it relates to claims for declaratory and prospective
16 injunctive relief.

17 41. Defendants DHS, CBP, Border Patrol, Nielsen, McAleenan,
18 Provost, and Karisch are collectively referred to herein as the “Federal
19 Defendants”.

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

7 **FACTUAL ALLEGATIONS**

8 Arizona State Route 86 Checkpoint

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

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

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

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

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

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

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

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

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

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

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

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

16 55. The interior checkpoint described at Paragraph 48 is not a
17 sobriety checkpoint.

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

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

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

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

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

10 61. During the six-month period from October 29, 2015, through
11 April 29, 2016, there were zero immigration-related arrests at the SR-86
12 checkpoint. During the same time period, there were six narcotic-related
13 arrests at the SR-86 checkpoint.

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

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

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

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

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

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

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

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

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

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

3 Plaintiff’s Interactions at the SR-86 Checkpoint

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

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

8 72. At all times relevant herein, Plaintiff was driving his personal
9 vehicle.

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

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

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

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

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

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

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

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

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

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

18 83. On several occasions, Defendant Border Patrol has detained
19 Plaintiff at the SR-86 checkpoint for the exclusive purpose of conducting a K-
20 9 drug-detection sniff around Plaintiff's vehicle.

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

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

8 Operation Stonegarden in Pima County

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

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

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

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

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

7 90. The Operation Stonegarden grant program does not confer any
8 federal immigration enforcement authority on state, county or local law
9 enforcement participants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Training and Supervision of Pima County Sheriff's Deputies

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

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

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

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

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

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

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

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

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

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

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

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

8 130. Defendant Nanos took no steps during his tenure to develop or
9 promulgate internal rules, regulations, guidelines, guidance, protocols or
10 directives related to PCSD duties while stationed at Border Patrol
11 checkpoints.

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

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

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

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

4 135. PCSD maintains a document issued to some of its employees
5 called the “Pima County Sheriff’s Department Rules and Regulations
6 Manual.” The current document is available at:
7 <https://www.pimasheriff.org/about-us/rules-and-regulations/>.

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

12 137. Upon information and belief, PCSD, under the direction of the
13 Sheriff, undertakes an annual review of the document described in Paragraph
14 135 to ensure that the document reflects the latest developments in the law.

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

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

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

4 141. PCSD requires no “operation specific briefing” of PCSD
5 deputies planning to participate in Operation Stonegarden deployments at
6 Border Patrol checkpoints.

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

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

11 144. Upon information and belief, between 2008 and 2017, neither
12 Defendant Nanos nor Defendant Napier undertook or directed their
13 subordinates to undertake any review of the document described in Paragraph
14 135 for the purpose of ensuring that PCSD operations at Border Patrol
15 checkpoints were consistent with current law.

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

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

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

9 April 10, 2017 Incident at SR-86 Checkpoint

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 175. Plaintiff exited his vehicle.

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

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

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

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

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

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

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

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

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

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

14 185. On or about September 27, 2017, through a process server,
15 Plaintiff served Notices of Claim pursuant to A.R.S. § 12-821.01, to
16 Defendant Pima County Board of Supervisors; Defendant Pima County
17 Sheriff's Department; Defendant Pima County Sheriff Mark Napier;
18 Defendant Pima County Deputy Ryan Roher; and Defendant Pima County
19 Deputy Brian Kunze.
20

CLAIMS FOR RELIEF

COUNT I

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

186. Plaintiff hereby realleges and incorporates by reference the allegations contained in paragraphs 1-185 as though fully set forth herein.

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

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

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

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

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

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

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

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

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

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

12 201. The Federal Defendants' primary purpose for operating the SR-
13 86 checkpoint is not to detect and apprehend aliens who are unlawfully
14 present in the United States, or to otherwise enforce the nation's immigration
15 laws.

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

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

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

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

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

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

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

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

6 **COUNT III**
7 **Violation of Fourth and Fourteenth Amendment Rights for Arrest**
8 **Absent Probable Cause**
9 **Against Defendants Roher and Kunze**
10

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

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

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

21 211. Defendant Roher arrested Plaintiff for allegedly violating A.R.S.
22 § 13-2906 (Obstructing a highway or other public thoroughfare), despite the

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

3 212. Defendant Kunze ratified Defendant Roher's actions and further
4 prolonged the length of Plaintiff's arrest, despite the fact that neither
5 Defendant Kunze nor Defendant Roher had probable cause to believe that
6 Plaintiff committed any crime.

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

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

12 215. Under this Count, Plaintiff seeks damages pursuant to 42 U.S.C.
13 § 1983 against Defendants Roher and Kunze, for effectuating and
14 subsequently ratifying Plaintiff's arrest, without probable cause to believe that
15 Plaintiff committed or was committing a crime.

16 **COUNT IV**
17 **Violation of Constitutional Rights Pursuant to *Monell v. New York City***
18 ***Department of Social Services***
19 **Against Defendant Napier, in his Official Capacity**

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

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

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

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

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

15 221. Plaintiff has been injured by this custom and practice and is
16 entitled to damages against Defendant Napier in his official capacity for
17 maintaining a custom or practice within PCSD that is likely to deprive local
18 residents, such as Plaintiff, of their Fourth and Fourteenth Amendment rights.
19

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.

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

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

COUNT VI

Failure to Supervise, 42 U.S.C. § 1983

Against Defendant Napier in his Individual Capacity, and Against Defendants Nanos, Kunze, and Pima County Board of Supervisors

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

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

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

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

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

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

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

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

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

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

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

11 **COUNT VII**
12 **False Imprisonment, Arizona State Law**
13 **Against Defendants Roher and Kunze**
14

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

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

20 243. The necessary elements of false imprisonment under Arizona law
21 are: (1) the defendant acted with intent to confine another person within
22 boundaries fixed by the defendant; (2) the defendant's act resulted in such

1 confinement, either directly or indirectly; and (3) the other person was
2 conscious of the confinement or was harmed by it. *See Hart v. Raynor*, 190
3 Ariz. 272 (App. 1997); *Boies v. Raynor*, 89 Ariz. 257 (1961).

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

6 245. Plaintiff did not consent to such confinement.

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

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

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

15 249. Defendant Kunze ratified and acquiesced to the actions that
16 Defendant Roher took in confining Plaintiff. Defendant Kunze had the
17 authority and ability to reverse or otherwise halt the unlawful actions of
18 Defendant Roher.

19 250. Plaintiff has been damaged and is entitled to monetary damages.
20

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

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.

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

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

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

9 **REQUEST FOR RELIEF**

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

- 11 1. Declaratory relief concerning the unconstitutionality of
12 Defendants' actions as described herein and as outlined in
13 Counts I and II.
- 14 2. A preliminary and permanent injunction prohibiting
15 Defendants from engaging in any of the unconstitutional
16 behaviors as described herein and as outlined in Counts I and II;
17 and to put into place safeguards sufficient to ensure that these
18 constitutional violations do not continue in the future;
- 19 3. Compensatory, general, statutory, and special damages in
20 an amount according to proof;

5. Such other relief as this Court deems appropriate.

Ralph E. Ellinwood, Attorney at Law, PLLC

Ralph E. Ellinwood
Attorney for Plaintiff