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

Terrence Bressi,

Plaintiff,

vs.

- (1) Pima County Sheriff Mark Napier, in his individual and official capacities;
- (2) Pima County Board of Supervisors;
- (3) Former Pima County Sheriff Clarence Dupnik, in his individual capacity;
- (4) Former Pima County Sheriff Christopher Nanos, in his individual capacity;
- (5) Pima County Deputy Sheriff Ryan Roher, in his individual capacity;
- (6) Pima County Deputy Sheriff Brian Kunze, in his individual capacity;
- (7) John Does 1-20 and Jane Does 1-20, Deputies, Sergeants, and/or Captains of Pima County

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

FIRST AMENDED COMPLAINT

Sheriff's Department, in their  
individual capacities;

Defendants.

1  
2 Plaintiff amends his Verified Complaint as follows:

3 JURISDICTION AND VENUE  
4

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

8 2. This Court has supplemental jurisdiction over the state law  
9 claims pursuant to 28 U.S.C. § 1367, as the state law claim is so related to the  
10 claims arising under the U.S. Constitution and federal statutes as to form part  
11 of the same case or controversy.

12 3. This Court has authority to award injunctive and declaratory  
13 relief pursuant to 28 U.S.C. §§ 1343, 2201, and 2202.

14 4. This Court has authority to award a reasonable attorney's fee  
15 pursuant to 42 U.S.C. § 1988(b).

16 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b), as  
17 Plaintiff resides in the District of Arizona and all events or omissions giving  
18 rise to this claim occurred in the District of Arizona.  
19

PARTIES

1  
2           6.     At all times relevant herein, Plaintiff has been a United States  
3 citizen.

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

6           8.     Defendants Ryan Roher, Bryan Kunze, and Pima County Does 1-  
7 20 were, at all relevant times, employees of the Pima County Sheriff's  
8 Department ("PCSD"). These Defendants are hereafter referred to  
9 collectively as the "individual county Defendants."

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

11          10.    Defendant Napier was the Sheriff of Pima County on April 10,  
12 2017.

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

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

17          13.    Pursuant to *Monell v. Department of Social Services*, 436 U.S.  
18 658 (1978), Sheriff Napier is a final policymaker of Pima County in the area  
19 of law enforcement.

1           14. At all times relevant herein, Defendant Napier acted under color  
2 of state law.

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

5           16. Defendant Christopher Nanos served as the Sheriff of Pima  
6 County from August 1, 2015, through January 1, 2017.

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

9           18. During his tenure as Sheriff, Defendant Nanos acted under color  
10 of state law in relation to his training and supervision of sworn officers  
11 employed by PCSD.

12           19. Defendant Nanos is being sued in his individual capacity.

13           20. Defendant Clarence Dupnik served as Sheriff of Pima County  
14 from February 1980 through August 1, 2015.

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

17           22. During his tenure as Sheriff, Defendant Dupnik acted under color  
18 of state law in relation to his training and supervision of sworn officers  
19 employed by PCSD.

20           23. Defendant Dupnik is being sued in his individual capacity.

1           24. At all relevant times herein, the individual county Defendants  
2 were all sworn peace officers who were certified by Arizona Peace Officer  
3 Standards & Training Board (“POST”), a nonprofit entity that was chartered  
4 by the Arizona Legislature, receives annual state appropriations, and retains  
5 exclusive authority to certify Arizona peace officers.

6           25. At all relevant times herein, the individual county Defendants  
7 were employed by PCSD as sworn peace officers.

8           26. By virtue of their certification as peace officers by POST and  
9 their employment by PCSD, the individual county Defendants had the  
10 authority from the state of Arizona to enforce Arizona state criminal statutes.

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

15           28. At all relevant times herein, the individual county Defendants  
16 acted under color of state law.

17           29. Defendant Pima County Board of Supervisors is the legislative  
18 body of Pima County, Arizona.

1           30. Pursuant to A.R.S. § 11-251, the Pima County Board of  
2 Supervisors is responsible to “supervise the official conduct of all county  
3 officers,” including that of the Sheriff.

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

7           32. Pursuant to A.R.S. § 11-201, the Pima County Board of  
8 Supervisors is responsible for setting the budget of all elected county officers,  
9 including that of the Sheriff.

10          33. Overall, the Pima County Board of Supervisors has several tools  
11 available to it to prospectively redress ongoing constitutional violations  
12 caused by the acts or omissions of the Sheriff.

13          34. The Pima County Board of Supervisors has the authority to  
14 accept, reject, and condition federal grants offered to elected county officers,  
15 including grants offered to the Sheriff.

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



1           42. The checkpoint described at Paragraph 41 is located in an  
2 unincorporated portion of Pima County.

3           43. The checkpoint described in Paragraph 41 is located  
4 approximately 49 air miles from the nearest point along the United  
5 States/Mexico border.

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

10          45. Despite the U.S. Border Patrol’s public statements to the  
11 contrary, the checkpoint described in Paragraph 41 is operated for the primary  
12 purpose of general crime control.

13          46. The U.S. Border Patrol’s primary purpose of operating the  
14 checkpoint described at Paragraph 41 is not to intercept unauthorized aliens.

15          47. The checkpoint described at Paragraph 41 is not a sobriety  
16 checkpoint.

17          48. The checkpoint described at Paragraph 41 is not conducted for  
18 the purpose of checking motorists’ drivers’ licenses.

19          49. The checkpoint described at Paragraph 41 is not conducted for  
20 the purpose of verifying that motorists possess automobile insurance.



1           50. The checkpoint described at Paragraph 41 is not conducted for  
2 the purpose of enforcing laws related to vehicle weight limits.

3           51. In particular, the checkpoint described at Paragraph 41 has as its  
4 primary purpose the detection and interdiction of illegal narcotics.

5           52. During the six-month period from October 29, 2015, through  
6 April 29, 2016, the U.S. Border Patrol reports that there were zero  
7 immigration-related arrests at the SR-86 checkpoint. During the same time  
8 period, there were six narcotic-related arrests at the SR-86 checkpoint.

9           53. During the six-month period from April 29, 2016, through  
10 October 29, 2016, the U.S. Border Patrol reports that there were 14  
11 immigration-related arrests at the SR-86 checkpoint. During the same time  
12 period, there were 21 narcotics-related arrests at the SR-86 checkpoint.

13           54. The SR-86 checkpoint is one of five U.S. Border Patrol  
14 checkpoints currently located in the unincorporated portions of Pima County.

15           55. Since commencing regular federal checkpoint operations in  
16 2008, U.S. Border Patrol have applied for and been granted state highway  
17 encroachment permits from the Arizona Department of Transportation  
18 (“ADOT”).

19           56. Under ADOT regulations, permits are required to be renewed on  
20 an annual basis.

1           57. One of the terms of the encroachment permit issued to U.S.  
2 Border Patrol for the SR-86 checkpoint in Pima County is that the checkpoint  
3 may only be operated at irregular times and on irregular dates.

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

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

16                           Plaintiff’s Interactions at the SR-86 Checkpoint

17           60. Between 2005 and February 2018, Plaintiff has passed through  
18 the SR-86 roadblock approximately 419 times.

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

1           62. Plaintiff's personal vehicle was widely known to and recognized  
2 by individual Defendants as belonging to Plaintiff.

3           63. Plaintiff is a United States citizen, a fact known to Defendant  
4 Roher and other county deputies at all times relevant herein.

5           64. Plaintiff traveled alone through the SR-86 checkpoint, a fact of  
6 which the U.S. Border Patrol was aware. This action was predictable to U.S.  
7 Border Patrol and raised absolutely no suspicion of human smuggling.

8           65. Employees of U.S. Border Patrol have routinely seized Plaintiff  
9 at the SR-86 checkpoint, despite knowing Plaintiff's identity and citizenship.

10          66. U.S. Border Patrol uses law enforcement K-9 units at the SR-86  
11 checkpoint.

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

15          68. On occasion, PCSD offers the use of PCSD K-9 units to U.S.  
16 Border Patrol.

17          69. The U.S. Border Patrol trains its K-9 units to detect for the scent  
18 of humans, cash, and more than one type of illegal narcotic.

19          70. At all times relevant herein, Defendants Napier, Dupnik, Nanos,  
20 Roher, and Kunze were personally aware that U.S. Border Patrol K-9 units

1 operating at the SR-86 checkpoint were trained for and capable of detecting  
2 the scent of narcotics.

3 71. On two occasions, U.S. Border Patrol placed dogs in the bed of  
4 Plaintiff's pickup truck without lawful excuse, and without Plaintiff's consent.

5 72. On several occasions, U.S. Border Patrol have detained Plaintiff  
6 at the checkpoint for the exclusive purpose of conducting a K-9 drug-  
7 detection sniff around Plaintiff's vehicle.

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

11 Operation Stonegarden in Pima County

12 74. Since at least 2012, U.S. Border Patrol have conducted joint  
13 operations with PCSD under a federal grant program known as "Operation  
14 Stonegarden."

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

1           76.     Operation Stonegarden is a federal grant program that pays  
2 state, county, and local law enforcement agencies situated close to an  
3 international border to work closely with the U.S. Border Patrol on federal  
4 border security missions.

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

9           78.     The Operation Stonegarden grant program does not confer any  
10 federal immigration enforcement authority on state, county or local law  
11 enforcement participants.

12           79.     Neither Pima County nor PCSD has a joint memorandum of  
13 agreement with the federal government under the program known as  
14 “287(g)”, codified at 8 U.S.C. § 1357(g).

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

18           81.     Under the terms of Operation Stonegarden, PCSD must  
19 coordinate its deployments with the U.S. Border Patrol.

1           82. Under the terms of Operation Stonegarden, the U.S. Border  
2 Patrol retains authority to direct PCSD Deputies to certain locations, during  
3 certain times, and with specific objectives determined by the Tucson Sector of  
4 the U.S. Border Patrol.

5           83. During all times relevant herein, commanders employed by the  
6 U.S. Border Patrol routinely assigned PCSD deputies to the SR-86 checkpoint  
7 during Operation Stonegarden work shifts.

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

12           85. During all times relevant herein, U.S. Border Patrol agents  
13 routinely allowed PCSD deputies to operate at the SR-86 checkpoint  
14 regardless of whether or not the deputies had been explicitly assigned there as  
15 part of the Operation Stonegarden grant program.

16           86. During all times relevant herein, U.S. Border Patrol agents  
17 assigned to work at the SR-86 checkpoint have allowed and encouraged  
18 PCSD deputies to engage in general law enforcement operations at the SR-86  
19 checkpoint.

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

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

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

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

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

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

1 of time on portions of the open highways that are unobstructed by a  
2 checkpoint.

3 93. During one 8-hour work shift while assigned to the SR-86  
4 checkpoint, Defendant Roher issued state law traffic citations to  
5 approximately thirty (30) different motorists who passed through the SR-86  
6 checkpoint during those 8-hours.

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

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

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



1           97. Once in the secondary lane, Defendant Roher found that the  
2 driver's license had been suspended and proceeded to issue a state law  
3 citation to the driver and have the vehicle towed.

4           98. Defendants Roher and Kunze were both earning overtime wages  
5 on April 10, 2017, pursuant to PCSD's participation in the Operation  
6 Stonegarden program.

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

10          100. The PCSD deputies called to the scene on these occasions were  
11 conducting Operation Stonegarden deployments in collaboration with the U.S.  
12 Border Patrol.

13          101. Defendant Pima County Board of Supervisors must approve each  
14 Operation Stonegarden grant award.

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

18          103. On February 16, 2016, Defendant Pima County Board of  
19 Supervisors approved the receipt of Operation Stonegarden funding to be

1 distributed to PCSD. They approved such funding without qualification or  
2 conditions.

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

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

9 Training and Supervision of Pima County Sheriff's Deputies

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

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

17 108. At all times relevant herein, PCSD did not offer Operation  
18 Stonegarden training to its deputies.

19 109. Upon information and belief, PCSD used none of the federal  
20 Operation Stonegarden grant funding it received in 2016 and 2017 (described

1 at Paragraphs 102 and 103) to develop or disseminate specialized training to  
2 those of its sworn deputies participating in Operation Stonegarden  
3 deployments.

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

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

11 112. Upon information and belief, at all times relevant herein, PCSD  
12 did not disseminate to any of its deputies any training materials related to the  
13 U.S. Supreme Court's decision in *Martinez-Fuerte v. United States*, 428 U.S.  
14 543 (1976).

15 113. Upon information and belief, at all times relevant herein, PCSD  
16 did not disseminate to any of its deputies any training materials related to the  
17 U.S. Supreme Court's decision in *City of Indianapolis v. Edmond*, 531 U.S.  
18 32 (2000).

1           114. At all times relevant herein, PCSD deputies routinely  
2 participated in Operation Stonegarden deployments at the SR-86 checkpoint  
3 without having received training specific to Border Patrol checkpoints.

4           115. At all times relevant herein, Defendant Roher did not receive  
5 training specific to Border Patrol checkpoints.

6           116. At all times relevant herein, with the exception of deployments  
7 taking place at international ports of entry, PCSD permitted its deputies to  
8 conduct Operation Stonegarden deployments without undergoing special or  
9 additional training.

10           117. Defendant Dupnik took no steps during his tenure to develop or  
11 disseminate training materials related to Operation Stonegarden.

12           118. Defendant Dupnik took no steps during his tenure to develop or  
13 promulgate internal rules, regulations, guidelines, guidance, protocols or  
14 directives related to Operation Stonegarden.

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

1           120. Defendant Nanos took no steps during his tenure to develop or  
2 promulgate internal rules, regulations, guidelines, guidance, protocols or  
3 directives related to Operation Stonegarden.

4           121. Defendant former Sheriff Nanos took no steps during his tenure  
5 to develop or promulgate internal rules, regulations, guidelines, guidance,  
6 protocols or directives related to PCSD duties while stationed at Border Patrol  
7 checkpoints.

8           122. At all times relevant herein, Defendant Napier took no steps to  
9 develop or disseminate training materials related to Operation Stonegarden.

10          123. At all times relevant herein, Defendant Napier took no steps to  
11 develop or disseminate training materials related to PCSD duties while  
12 stationed at Border Patrol checkpoints.

13          124. At all times relevant herein, Defendant Napier took no steps to  
14 develop internal policies, rules, regulations, protocols, guidelines, guidance,  
15 protocols or directives related to Operation Stonegarden.

16          125. At all times relevant herein, Defendant Napier took no steps to  
17 develop internal policies, rules, regulations, protocols, guidelines, protocols or  
18 directives related to PCSD duties while stationed at Border Patrol  
19 checkpoints.

1           126. PCSD maintains a document issued to every deputy employed by  
2 PCSD called the “Pima County Sheriff’s Department Rules and Regulations  
3 Manual.” The current document is available at:  
4 <https://www.pimasheriff.org/about-us/rules-and-regulations/>.

5           127. The document described in Paragraph 126 is designed to guide  
6 members of the Pima County Sheriff’s Department in carrying out the duties,  
7 responsibilities, and obligations set forth by law, or assumed by them, in order  
8 to fulfill the mission of the Department.

9           128. Upon information and belief, PCSD, under the direction of the  
10 Sheriff, undertakes an annual review of the document described in Paragraph  
11 126 to ensure that the document reflects the latest developments in the law.

12           129. The current version of the document described in Paragraph 126  
13 consists of 419 pages, not including the preface, index, and table of contents.

14           130. On April 10, 2017, the then-operative version of the document  
15 described in Paragraph 126 provided instructions and guidance related to the  
16 proper operation of a sobriety checkpoint.

17           131. Pursuant to the document described in Paragraph 126, PCSD  
18 deputies who participate in sobriety checkpoints are required to attend an  
19 “operation specific briefing” prior to their participation in said checkpoint.

1           132. PCSD requires no “operation specific briefing” of PCSD  
2 deputies planning to participate in Operation Stonegarden deployments at  
3 Border Patrol checkpoints.

4           133. On April 10, 2017, the then-operative version of the document  
5 described in Paragraph 126 nowhere mentioned Border Patrol checkpoints.

6           134. On April 10, 2017, the then-operative version of the document  
7 described in Paragraph 126 nowhere mentioned Operation Stonegarden.

8           135. Upon information and belief, between 2008 and 2017, neither  
9 Defendant Dupnik, Defendant Nanos, nor Defendant Napier undertook or  
10 directed their subordinates to undertake any review of the document described  
11 in Paragraph 126 for the purpose of ensuring that PCSD operations at Border  
12 Patrol checkpoints were consistent with current law.

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

18           137. Upon information and belief, during all times relevant herein,  
19 Defendants Dupnik, Nanos, and Napier were personally aware that certain

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

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

7 April 10, 2017 Incident at SR-86 Checkpoint

8 139. On three occasions since 2013, Plaintiff was cited under state law  
9 at the SR-86 checkpoint by PCSD Deputies who were working in  
10 collaboration with the U.S. Border Patrol under Operation Stonegarden.

11 140. The most recent of those occasions was on April 10, 2017, the  
12 subject of this lawsuit.

13 141. On April 10, 2017, Plaintiff was traveling eastbound on SR-86  
14 and came upon the Border Patrol checkpoint described herein at Paragraph  
15 41.

16 142. Plaintiff slowed down and brought his vehicle to a complete stop,  
17 as indicated by the traffic signs.

18 143. Plaintiff lowered his window slightly to enable himself to hear  
19 the instructions from the Border Patrol agent on duty at the checkpoint.



1           144. Agent Frye of the U.S. Border Patrol asked Plaintiff to declare  
2 whether or not Plaintiff is a U.S. citizen.

3           145. In exercising his First Amendment right not to speak, Plaintiff  
4 declined to declare his citizenship status.

5           146. As a direct result of Plaintiff's choice not to declare his  
6 citizenship status, Agent Frye indicated to Plaintiff that Plaintiff was not free  
7 to leave and was not free to proceed down the highway.

8           147. Accordingly, Plaintiff remained seated in the driver seat of his  
9 vehicle and remained at a complete stop within the confines of the SR-86  
10 Border Patrol checkpoint.

11           148. After approximately 80 seconds of Plaintiff being detained by  
12 Agent Frye at the checkpoint, Agent Frye asked another agent on the South  
13 side of the checkpoint where the supervisor went.

14           149. A few seconds later, Defendant Roher began approaching the  
15 scene by foot from where he had been stationed on the South side of the  
16 checkpoint's primary stop location.

17           150. At the time, Defendant Roher was working an eight-hour  
18 Operation Stonegarden shift.

19           151. At this moment, Defendant Roher assumed control of the law  
20 enforcement interaction with Plaintiff.

1           152. Upon taking over the law enforcement interaction with Plaintiff,  
2 Defendant Roher learned from Agent Frye that he had refused to allow  
3 Plaintiff to proceed down the highway because Plaintiff had not yet declared  
4 his citizenship status.

5           153. Defendant Roher then explained to Plaintiff that Plaintiff needed  
6 to answer Agent Frye's immigration questions.

7           154. When Defendant Roher continued detaining Plaintiff in the lane  
8 of traffic, Plaintiff asked Defendant Roher what law he thought Plaintiff was  
9 violating.

10          155. In response, Defendant Roher indicated Plaintiff could leave the  
11 checkpoint.

12          156. The total elapsed time that Defendant Roher detained Plaintiff at  
13 the same spot where Plaintiff had initially come to a complete stop while  
14 being detained by Agent Frye was approximately 64 seconds.

15          157. Plaintiff immediately complied with Defendant Roher's  
16 instruction to leave the checkpoint and began to drive down the highway.

17          158. While beginning to accelerate away from the Border Patrol  
18 checkpoint, Plaintiff glanced in his mirror and immediately noticed that  
19 Defendant Roher was running toward his PCSD patrol vehicle.

1           159. Plaintiff interpreted this movement by Defendant Roher as a  
2 clear indication that Defendant Roher intended to effectuate a traffic stop on  
3 Plaintiff.

4           160. Plaintiff then pulled his vehicle to the right shoulder of SR-86,  
5 several dozen yards east of the Border Patrol checkpoint.

6           161. Defendant Roher got into his PCSD patrol vehicle and drove  
7 several dozen yards to where Plaintiff was now parked on the right-hand  
8 shoulder of SR-86.

9           162. Plaintiff remained seated in the driver seat of his vehicle, and  
10 Defendant Roher exited his PCSD patrol vehicle and approached Plaintiff's  
11 driver-side window.

12           163. Defendant Roher requested Plaintiff to exit his vehicle.

13           164. When Plaintiff requested to know whether he was being  
14 detained, Defendant Roher ordered Plaintiff out of his vehicle without  
15 answering the question.

16           165. Plaintiff exited his vehicle.

17           166. Defendant Roher requested Plaintiff to provide his photo  
18 identification.

1           167. Plaintiff handed his photo identification to Defendant Roher,  
2 asked him who his supervisor was, and asked him to call his supervisor to the  
3 scene.

4           168. After failing to answer some of Defendant Roher's questions,  
5 Defendant Roher arrested and handcuffed Plaintiff.

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

8           170. After effectuating the arrest, Defendant Roher revealed to  
9 Plaintiff that he had been familiar with Plaintiff prior to that day and knew  
10 that Plaintiff passed through the SR-86 checkpoint on a somewhat regular  
11 basis.

12           171. Defendant Roher revealed to Plaintiff that he was familiar with  
13 Plaintiff's views regarding Border Patrol checkpoints.

14           172. Defendant Roher revealed to Plaintiff that he was aware that  
15 Plaintiff was delayed in the lane of traffic at the Border Patrol checkpoint  
16 because a federal agent was detaining him there.

17           173. While Plaintiff was still in handcuffs, Defendant Kunze arrived  
18 to the scene. Defendant Kunze ratified Defendant Roher's decision to arrest  
19 Plaintiff.

1 174. Months following the April 10, 2017, arrest, Defendant Roher  
2 admitted to discussing Plaintiff with Border Patrol employees prior to April  
3 10, 2017.

4 175. On or about September 27, 2017, through a process server,  
5 Plaintiff served Notices of Claim pursuant to A.R.S. § 12-821.01, to  
6 Defendant Pima County Board of Supervisors; Defendant Pima County  
7 Sheriff's Department; Defendant Pima County Sheriff Mark Napier;  
8 Defendant Pima County Deputy Ryan Roher; and Defendant Pima County  
9 Deputy Brian Kunze.

10 **COUNT I**  
11 **VIOLATION OF FIRST AND FOURTEENTH AMENDMENT RIGHTS**  
12 **42 U.S.C. § 1983**  
13  
14

15 176. Plaintiff reasserts those allegations contained in paragraphs 1-  
16 175 as though fully set forth herein.

17 177. On April 10, 2017, Plaintiff was exercising his First Amendment  
18 right not to speak, a clearly established right first articulated by the U.S.  
19 Supreme Court in 1943 and subsequently reaffirmed and upheld numerous  
20 times in the intervening years.

21 178. Defendants Roher and Kunze were aware at all relevant times  
22 that Plaintiff was exercising this First Amendment right not to speak on April  
23 10, 2017.

1           179. Defendants Roher and Kunze were aware at all times that  
2 Plaintiff had not moved from the checkpoint because law enforcement  
3 officials refused to allow Plaintiff to continue down the highway without first  
4 speaking on a topic about which Plaintiff desired not to speak.

5           180. Defendant Roher was aware of no law – local, state, or federal –  
6 that required U.S. citizen motorists such as Plaintiff to declare their  
7 citizenship status at a Border Patrol checkpoint.

8           181. Defendant Roher retaliated against Plaintiff by effectuating an  
9 arrest, in direct response to Plaintiff's unwillingness to speak on a topic about  
10 which Plaintiff desired not to speak.

11           182. Defendant Kunze ratified Defendant Roher's retaliatory arrest.

12           183. Defendant Roher's and Defendant Kunze's actions would 'chill a  
13 person of ordinary firmness' from continuing to engage in the First  
14 Amendment protected activity.

15           184. The exercise of Plaintiff's protected right was a substantial and  
16 motivating factor for the Defendants' conduct and reveals the intention to  
17 interfere with Plaintiff's First Amendment rights.

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

1 186. Defendants Roher and Kunze were acting under color of state  
2 law.

3 187. Plaintiff has suffered, and continues to suffer, harm as a direct  
4 result of the First Amendment retaliatory arrest effectuated by Defendants on  
5 April 10, 2017.

6 188. Under this Count, Plaintiff seeks monetary damages pursuant to  
7 42 U.S.C. § 1983 against Defendants Roher and Kunze for his April 10, 2017,  
8 deprivation of his First and Fourteenth Amendment right to Free Speech.

9 189. Under this Count, Plaintiff seeks declaratory and injunctive relief  
10 to prevent future deprivations of Plaintiff's First and Fourteenth Amendment  
11 right to Free Speech.

12 **COUNT II**  
13 **VIOLATION OF FOURTH AND FOURTEENTH AMENDMENT RIGHTS**  
14 **PURSUANT TO *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000)**  
15 **42 U.S.C. § 1983**  
16

17 190. Plaintiff reasserts those allegations contained in paragraphs 1-  
18 189 as though fully set forth herein.

19 191. Pursuant to *Martinez-Fuerte v. United States*, 428 U.S. 543  
20 (1976), and consistent with the Fourth Amendment, the U.S. Border Patrol  
21 has the legal authority to maintain the SR-86 checkpoint for the primary  
22 purpose of detecting and apprehending individuals unlawfully present in the  
23 United States.

1           192. Pursuant to *Martinez-Fuerte v. United States*, 428 U.S. 543  
2 (1976), the U.S. Border Patrol has the legal authority to briefly seize, absent  
3 particularized suspicion, motorists passing through the SR-86 checkpoint for  
4 the limited purpose of asking one or two questions intended to confirm that  
5 the vehicle contains no unlawfully present aliens.

6           193. The ability of the U.S. Border Patrol to briefly seize motorists at  
7 the SR-86 checkpoint without particularized suspicion is contingent upon the  
8 U.S. Border Patrol's maintaining such checkpoint for the primary purpose of  
9 enforcing the nation's immigration laws.

10           194. The Border Patrol's primary purpose for operating the SR-86  
11 checkpoint is not to detect and apprehend aliens who are unlawfully present in  
12 the U.S.

13           195. In particular, on April 10, 2017, the U.S. Border Patrol operated  
14 the SR-86 checkpoint in such a manner that its primary purpose for operating  
15 the checkpoint on that particular day was for general law enforcement  
16 purposes.

17           196. Upon arriving at the SR-86 Border Patrol checkpoint on April  
18 10, 2017, Plaintiff was unlawfully seized and detained by U.S. Border Patrol  
19 agents, as the U.S. Border Patrol possessed no particularized suspicion to  
20 believe that Plaintiff's vehicle contained aliens unlawfully present in the U.S.



1           197. The U.S. Border Patrol on that particular day was operating the  
2 checkpoint in such a manner that the primary purpose of the checkpoint was  
3 for detection of general criminal wrongdoing rather than for the primary  
4 purpose of detecting and apprehending aliens unlawfully present in the U.S.

5           198. During the course of Plaintiff's seizure at the SR-86 checkpoint,  
6 U.S. Border Patrol agents handed the law enforcement interaction over to  
7 Defendant Roher, who was specifically assigned to work at the SR-86  
8 checkpoint on that particular day. This action evidences that the primary  
9 purpose of the SR-86 checkpoint on April 10, 2017, was not the detection and  
10 apprehension of aliens unlawfully present in the U.S.

11           199. Defendant Roher knowingly restrained the liberty of Plaintiff  
12 without particularized suspicion at a location that the Fourth Amendment  
13 authorizes be done only by federal law enforcement agents for a limited  
14 immigration-related purpose.

15           200. Defendant Roher knowingly restrained the liberty of Plaintiff  
16 without particularized suspicion, despite the fact that Defendant Roher lacked  
17 the legal authority to investigate possible violations of federal immigration  
18 law – the only purpose for which the existence of the SR-86 checkpoint is  
19 authorized.

20           201. Defendant Roher was acting under color of state law.



1 particularized suspicion that Plaintiff had committed any state or federal  
2 crime for which Defendant Roher had legal authority to arrest.

3 208. Defendant Roher was aware that U.S. Border Patrol agents had  
4 found no particularized suspicion to continue detention of or to arrest  
5 Plaintiff.

6 209. Defendant Roher was similarly unable to articulate any  
7 reasonable suspicion or probable cause to believe that Plaintiff had committed  
8 or was committing a state misdemeanor, felony or petty offense.

9 210. Defendant Roher arrested Plaintiff for allegedly violating A.R.S.  
10 § 13-2906 (Obstructing a highway or other public thoroughfare), despite the  
11 fact that Defendant Roher had no probable cause to believe that Plaintiff  
12 committed or was committing such crime.

13 211. Defendant Kunze ratified Defendant Roher's actions and further  
14 prolonged the length of Plaintiff's arrest, despite the fact that Defendant  
15 Kunze lacked probable cause to believe that Plaintiff committed any crime.

16 212. Defendants Roher and Kunze were acting under color of state  
17 law.

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





1 Sheriff's deputies. The failure to do so caused the deprivation of Plaintiff's  
2 constitutional rights.

3 226. Defendants failed to train their deputies to handle usual and  
4 recurring situations.

5 227. Defendants were indifferent to the substantial risk of inadequate  
6 policies to prevent violations of law by its deputies.

7 228. Defendants' failure to do so caused the deprivation of Plaintiff's  
8 constitutional rights.

9 229. Defendant Pima County Board of Supervisors and Defendant  
10 Sheriffs could have prevented the constitutional violation of Plaintiff with an  
11 appropriate policy.

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

13 **COUNT VI**

14 **VIOLATION OF 42 U.S.C. § 1983, FAILURE TO SUPERVISE, AS TO**  
15 **DEFENDANT NAPIER IN HIS INDIVIDUAL CAPACITY, AND AS TO**  
16 **DEFENDANTS DUPNIK, NANOS, KUNZE, DOE DEFENDANTS 1-20,**  
17 **AND DEFENDANT PIMA COUNTY BOARD OF SUPERVISORS**  
18

19 231. Plaintiff reasserts the allegations contained in paragraphs 1-230  
20 as though fully set forth herein.

21 232. Defendants were acting under the color of state law.

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

1 234. Defendants personally knew that their subordinates were  
2 engaging in acts that deprived Plaintiff of his constitutional rights.

3 235. Defendants knew or reasonably should have known that the  
4 subordinates conduct would deprive Plaintiff of his constitutional rights.

5 236. Defendants failed to act to prevent their subordinates from  
6 engaging in such conduct.

7 237. Defendants disregarded the known or obvious consequences that  
8 a particular training deficiency would cause the subordinate to violate  
9 Plaintiff's constitutional rights.

10 238. The deficiency of this particular training did actually cause the  
11 subordinates to deprive Plaintiff of his constitutional rights.

12 239. Defendants engaged in conduct that showed a reckless disregard  
13 to the deprivation by the subordinates of the rights of people such as Plaintiff.

14 240. The Defendants' conduct was so closely related to the  
15 deprivation of Plaintiff's rights as to be the moving force that caused the  
16 ultimate injury.

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

18  
19 **COUNT VII**  
20 **FALSE IMPRISONMENT AS AGAINST**  
21 **DEFENDANTS ROHER AND KUNZE**

1           242. Plaintiff reasserts the allegations contained in paragraphs 1-241  
2 as though fully set forth herein.

3           243. On April 10, 2017, Plaintiff was falsely imprisoned by Defendant  
4 Roher when he was handcuffed and prevented from leaving his location  
5 outside of the SR-86 checkpoint.

6           244. The necessary elements to prove false imprisonment are: (1) the  
7 defendant acted with intent to confine another person within boundaries fixed  
8 by the defendant; (2) the defendant's act resulted in such confinement, either  
9 directly or indirectly; and (3) the other person was conscious of the  
10 confinement or was harmed by it. *See Hart v. Raynor*, 190 Ariz. 272, 281,  
11 947 P.2d 846, 855 (App. 1997). "Any restraint, however slight, upon  
12 another's liberty to come and go as one pleases, *constitutes* an arrest." *See*  
13 *Boies v. Raynor*, 89 Ariz. 257, 259, 361 P.2d 1, 2 (1961), *quoting Swetman v.*  
14 *F.W. Woolworth Co.*, 83 Ariz. 189, 192, 318 P.2d 364, 366 (1957).

15           245. Defendant Roher acted with intent and confined Plaintiff within a  
16 fixed boundary.

17           246. Defendant Roher's conduct resulted in the confinement of  
18 Plaintiff, without Plaintiff's consent, and without probable suspicion of any  
19 crime committed by Plaintiff.



