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8 UNITED STATES DISTRICT COURT

9 DISTRICT OF ARIZONA

10 Guillermo Tenorio-Serrano, as an
11 individual and on behalf of all others
12 similarly situated,

13 Plaintiff,

14 v.

15 James (“Jim”) Driscoll, Sheriff of
16 Coconino County, Arizona; Matt Figueroa,
17 Jail Commander of the Coconino County
18 Detention Facility; Matt Ryan, member of
19 the Board of Directors of the Coconino
20 County Jail District; Lena Fowler, member
21 of the Board of Directors of the Coconino
County Jail District; Jim Parks, member of
the Board of Directors of the Coconino
County Jail District; Elizabeth Archuleta,
member of the Board of Directors of the
Coconino County Jail District; Art
Babbott, member of the Board of Directors
of the Coconino County Jail District, all in
their official capacities,

Defendants.

Case No. 3:18-cv-08075-DGC-BSB

FIRST AMENDED COMPLAINT

(CLASS ACTION)

COMPLAINT

PRELIMINARY STATEMENT

1
2
3 1. Pursuant to policy of the Coconino County Sheriff's Office ("CCSO"),
4 Coconino County will prolong the jail time of inmates suspected of residing in the
5 United States without lawful immigration status, even if Coconino County lacks any
6 state law basis for continued detention.

7 2. Plaintiff Guillermo Tenorio-Serrano ("Plaintiff" or "Tenorio-Serrano") was
8 arrested on December 11, 2017 for alleged misdemeanor violations of A.R.S. § 28-
9 1381(A)(1), (2) and § 28-1382(A)(1), (2) (driving under the influence of alcohol).

10 3. On December 12, 2017, the Flagstaff Justice Court set Plaintiff's bond at
11 \$2,000.

12 4. On at least two occasions since December 12, 2017, individuals have
13 attempted to post bond on Plaintiff's behalf.

14 5. Despite numerous individuals being willing to post bond for Tenorio-Serrano,
15 Plaintiff remains detained in the Coconino County Detention Facility ("CCDF") due
16 to CCDF's unconstitutional policy of prolonging detention of inmates for whom it
17 receives a "detainer" request from the U.S. Immigration and Customs Enforcement
18 agency ("ICE").

19 6. CCDF's policy violates the Fourth and Fourteenth Amendments to the United
20 States Constitution and Article II, Section 8 of the Arizona Constitution by requiring
21 Plaintiff to remain in jail after meeting all conditions of pre-trial release, without any

1 independent probable cause determination that Mr. Tenorio-Serrano has committed
2 an additional crime, and without any recognized exception to the Warrant Clause of
3 the Fourth Amendment to the U.S. Constitution.

4 **JURISDICTION AND VENUE**

5 7. This Court has subject matter jurisdiction over this action pursuant to 28
6 U.S.C. § 1331, as this action arises under the U.S. Constitution and 42 U.S.C. §
7 1983.

8 8. This Court has subject matter jurisdiction over this action pursuant to 28
9 U.S.C. § 1343, as Plaintiff seeks to redress the deprivation of Constitutional rights
10 denied him under the color of state law.

11 9. This Court has the authority to grant injunctive and declaratory relief
12 pursuant to 28 U.S.C. §§ 1343, 2201, and 2202.

13 10. This Court has authority to award attorneys' fees pursuant to 42 U.S.C. §
14 1988(b) and Rule 23(g)(1)(D) and 23(h), Fed. R. Civ. P.

15 11. This Court has supplemental jurisdiction over the state law claim pursuant to
16 28 U.S.C. § 1367, as the state law claim is so related to the claims arising under the
17 U.S. Constitution and federal laws as to form part of the same case or controversy.

18 12. Venue is proper pursuant to 28 U.S.C. § 1391(b) because Plaintiff is currently
19 detained within the District of Arizona, Plaintiff resides in the District of Arizona,
20 and a substantial part of the events or omissions giving rise to this claim occurred in
21 the District of Arizona.

PARTIES

13. Plaintiff Guillermo Tenorio-Serrano is a resident of Coconino County, Arizona.

14. Plaintiff is currently held as a pre-trial detainee in CCDF, located at 951 E. Sawmill Road in Flagstaff, Arizona.

15. Plaintiff has been continuously held as a pre-trial detainee by the CCSO since December 11, 2017.

16. Defendant James Driscoll is the Coconino County Sheriff and has served as the Coconino County Sheriff during all times relevant to this action. Mr. Driscoll is sued in his official capacity.

17. Mr. Driscoll's duties include taking charge of and keeping CCDF, pursuant to A.R.S. §§ 11-441(A)(5) and 48-4002(F).

18. Defendant Matt Figueroa is an employee of CCSO and serves as the Jail Commander of CCDF. Mr. Figueroa is sued in his official capacity.

19. Upon information and belief, Mr. Driscoll has delegated to Mr. Figueroa the authority to formulate jail policy.

20. Upon information and belief, Defendant Matt Figueroa drafted the current version of the jail policy that implements the constitutional violations addressed in this action.

21. Upon information and belief, Defendant Matt Figueroa is responsible for overseeing the day-to-day operations of CCDF.

1 22. Upon information and belief, Defendant Matt Figueroa has supervisory
2 responsibility over all civilian CCSO employees working at CCDF, including those
3 civilian employees responsible for accepting and/or processing bail.

4 23. The Coconino County Jail District (“Jail District”) is a political subdivision
5 of the State of Arizona. It is organized and established to provide in-custody
6 detention and inmate-correctional housing in the CCDF pursuant to A.R.S. § 48-
7 4001, *et seq.*

8 24. The Jail District is overseen and operated by the CCSO and the Coconino
9 County Board of Supervisors. The County Board of Supervisors serves as the Board
10 of Directors of the Jail District. *See* A.R.S. § 48-4002.

11 25. Defendant Matt Ryan is the chairman of the Coconino County Board of
12 Supervisors and a member of the Board of Directors for the Jail District. Mr. Ryan is
13 sued in his official capacity.

14 26. Defendant Lena Fowler is vice-chair of the Coconino County Board of
15 Supervisors and a member of the Board of Directors for the Jail District. Ms. Fowler
16 is sued in her official capacity.

17 27. Defendant Elizabeth Archuleta is a member of the Coconino County Board of
18 Supervisors and a member of the Board of Directors for the Jail District. Ms.
19 Archuleta is sued in her official capacity.

1 28. Defendant Art Babbott is a member of the Coconino County Board of
2 Supervisors and a member of the Board of Directors for the Jail District. Mr.
3 Babbott is sued in his official capacity.

4 29. Defendant Jim Parks is a member of the Coconino County Board of
5 Supervisors and a member of the Board of Directors for the Jail District. Mr. Parks
6 is sued in his official capacity.

7 30. Defendants Ryan, Fowler, Archuleta, Babbott, and Parks are hereafter
8 referred to as the “Jail Board Defendants.”

9 31. Upon information and belief, prior to taking full effect, the Jail Board
10 Defendants reviewed the current version of the jail policy that implements the
11 constitutional violations addressed in this action.

12 32. Upon information and belief, a majority of the Jail Board Defendants voted to
13 approve implementation of the current version of the jail policy that implements the
14 constitutional violations addressed in this action.

15 **GENERAL ALLEGATIONS**

16 **I. CCSO’s 2017 Jail Policy**

17 33. Upon information and belief, the CCSO has had in place since at least
18 January 2008 a written policy setting out the steps jail staff are to follow when
19 encountering a CCDF inmate suspected of being in the United States without lawful
20 immigration status.
21

1 34. On July 28, 2017, CCSO issued a revised version of this jail policy, entitled
2 “Suspected Illegal Immigrant Inmates” (“2017 Jail Policy”). A copy of this 2017 Jail
3 Policy is attached as Exhibit “A.”

4 35. The 2017 Jail Policy became effective on July 28, 2017 and remains in place
5 to this date.

6 36. The 2017 Jail Policy controls the ongoing detention of Mr. Tenorio-Serrano.

7 37. The 2017 Jail Policy instructs CCDF staff to allow inmates with “ICE
8 detainers” (also referred to as “ICE holds”) to “post bond on their local charges.”
9 Exhibit A.

10 38. However, the 2017 Jail Policy also instructs staff that such inmates “will
11 remain in custody” until either: 1) ICE provides notice it has dropped its detainer; 2)
12 ICE takes custody of the inmate; or 3) ICE fails to take custody of the inmate within
13 forty-eight hours of a defendant posting bond. Exhibit A.

14 39. The 2017 Jail Policy instructs CCSO personnel to prolong detention of a
15 subset of pre-trial detainees beyond the time CCSO would otherwise hold them, for
16 the sole reason that CCSO received an “ICE detainer” and an accompanying “ICE
17 administrative warrant.” Exhibit A.

18 40. Upon information and belief, Defendant Figueroa drafted the 2017 Jail
19 Policy. Defendant Figueroa was acting under color of state law when he did so.

20 41. The 2017 Jail Policy was drafted and issued under the supervision of
21 Defendant Driscoll.

1 42. The 2017 Jail Policy was implemented under the supervision of Defendant
2 Driscoll, who, pursuant to A.R.S. § 11-441, is a final policymaking authority whose
3 edicts or acts may fairly be said to represent official policy with regard to the daily
4 operations of the county jail and the inmates held within it.

5 43. Defendant Driscoll ratified the 2017 Jail Policy after it was drafted and
6 prepared by his subordinate, Defendant Figueroa.

7 44. In implementing or otherwise ratifying the 2017 Jail Policy, Defendant
8 Driscoll was undertaking an act of official government policy of Coconino County.

9 45. Upon information and belief, CCFD employees were trained or otherwise
10 instructed to implement the provisions of the 2017 Jail Policy when fulfilling their
11 duties to receive and process bond on behalf of pre-trial detainees.

12 **II. Defendants' Awareness of the Unlawfulness of the 2017 Jail Policy and of Mr.**
13 **Tenorio-Serrano's Prolonged Jail Detention**

14 46. In 2010, Arizona enacted a state law codified in relevant part at A.R.S. § 11-
15 1051, commonly known as "SB 1070."

16 47. No provision of SB 1070 requires local law enforcement agencies to prolong
17 the detention of pre-trial detainees in county jail.

18 48. No state or federal court has interpreted any provision of SB 1070 to require
19 local law enforcement agencies to prolong the detention of pre-trial detainees in
20 county jail.

21 49. No provision of SB 1070 mentions the terms "ICE detainer," "ICE hold,"
"immigration detainer," "immigration hold," "federal law enforcement detainer,"

1 “federal law enforcement hold,” “ICE administrative warrant,” “administrative
2 warrant,” or “immigration warrant.”

3 50. No provision of SB 1070 mentions the terms “jail,” “county jail,” “detention
4 facility,” “inmate,” or “pre-trial detention.”

5 51. No provision of SB 1070 authorizes law enforcement agencies to prolong the
6 pre-trial jail detention of individuals suspected of being in the United States without
7 lawful status.

8 52. No provision of SB 1070 authorizes law enforcement agencies to prolong the
9 pre-trial jail detention of individuals in response to a request from a federal law
10 enforcement agency.

11 53. On September 20, 2016, pursuant to its state statutory authority under A.R.S.
12 § 41-193, the Arizona Attorney General issued Advisory Opinion No. 16-010 with
13 the stated purpose to “guide law enforcement agencies and officers as to their duties
14 under state law.” A copy of this Opinion is attached as Exhibit I.

15 54. Arizona Attorney General Advisory Opinion No. 16-010 states that: “If an
16 officer has probable cause to believe that an individual has committed a civil
17 immigration violation, the officer has no authority to arrest the individual and shall
18 not detain the individual longer than necessary to complete the state law basis for the
19 contact.”

20 55. Arizona Attorney General Advisory Opinion No. 16-010 does not mention
21 the terms “ICE detainer,” “ICE hold,” “immigration detainer,” “immigration hold,”

1 “federal law enforcement detainer,” “federal law enforcement hold,” “ICE
2 administrative warrant,” “administrative warrant,” or “immigration warrant.”

3 56. Arizona Attorney General Advisory Opinion No. 16-010 mentions the word
4 “jail” exactly once. The only reference to the word “jail” is the admonition that a
5 “jail official shall not prolong an arrest or detention for an immigration inquiry[.]”
6 Exhibit I.

7 57. Arizona Attorney General Advisory Opinion No. 16-010 does not otherwise
8 address the obligations of jails or jail staff.

9 58. Arizona Attorney General Advisory Opinion No. 16-010 is the only Arizona
10 Attorney General advisory opinion interpreting the provisions of SB 1070.

11 59. On September 19, 2017, Mik Jordahl, the Coconino County Inmate Civil
12 Rights Advising Attorney, communicated with County Attorney Bill Ring and
13 Defendant Matt Figueroa expressing concerns about CCDF’s practice of prolonging
14 the detention of those pre-trial detainees with pending ICE detainers. A copy of this
15 communication is attached as Exhibit B.

16 60. Mr. Jordahl indicated “there may be some significant liabilities to the County
17 and the Jail District to holding a person without a court order, even for a matter of
18 hours after they otherwise would have been released.” Exhibit B.

19 61. On September 28, 2017, the ACLU of Arizona sent a twelve-page letter to
20 Respondent Jim Driscoll and other officers of Coconino County outlining the
21

1 constitutional concerns with the 2017 Jail Policy. A copy of this letter is attached as
2 Exhibit C.

3 62. The ACLU letter provided Defendant Jim Driscoll with no fewer than ten
4 case citations from federal district courts, federal circuit courts, and state supreme
5 courts in other states indicating that several provisions of the 2017 Jail Policy are
6 unconstitutional. Exhibit C.

7 63. The ACLU letter informed Defendants that at least two (2) federal district
8 court cases within the Ninth Circuit have struck down as unconstitutional jail
9 practices similar to Coconino County's 2017 Jail Policy. Exhibit C, p.3, 5; *Ochoa v.*
10 *Campbell*, 2017 WL 3476777 (E.D. Wash. July 31, 2017); *Miranda-Olivares v.*
11 *Clackamas Cty.*, 2014 WL 1414305 (D. Or. April 11, 2014).

12 64. Upon information and belief, Defendant Jim Driscoll and Coconino County
13 Attorney Bill Ring received the ACLU's letter on or about September 30, 2017.

14 65. In October 2017, a group of concerned citizens met with Defendant Jim
15 Driscoll and County Attorney Bill Ring to express their concerns about the 2017 Jail
16 Policy.

17 66. In December 2017 a group of concerned citizens met again with County
18 Attorney Bill Ring to reiterate their concerns about the 2017 Jail Policy.

19 67. On February 27, 2018, at least six residents of Coconino County appeared
20 before the regularly-scheduled meeting of the Coconino County Board of
21 Supervisors to bring to their attention the constitutional violations of the 2017 Jail

1 Policy. All five members of the Coconino County Board of Supervisors were in
2 attendance during this meeting.

3 68. In March 2018, numerous residents of Coconino County appeared before the
4 regularly-scheduled meeting of the Coconino County Board of Supervisors to again
5 bring to their attention the constitutional violations of the 2017 Jail Policy.

6 69. Defendants continue to refuse to revise or replace the 2017 Jail Policy.

7 70. Mr. Tenorio-Serrano's Fourth and Fourteenth Amendment rights to secure
8 prompt release from CCDF upon satisfaction of all local conditions of release were
9 clearly established as of December 12, 2017, the day the Flagstaff Justice Court set a
10 bond in his criminal case.

11 71. The nature of Mr. Tenorio-Serrano's Fourth and Fourteenth Amendment
12 rights in this context were sufficiently clear as of December 12, 2017, such that a
13 reasonable official would have known that implementing the 2017 Jail Policy
14 violated Mr. Tenorio-Serrano's rights.

15 72. Defendants had fair notice as early as December 12, 2017 that prolonging Mr.
16 Tenorio-Serrano's pre-trial detention was unlawful.

17 73. Defendants had fair notice as early as December 12, 2017 that no state law
18 compelled them to prolong the pre-trial detention of Mr. Tenorio-Serrano.

1 **III. Mr. Tenorio-Serrano's Initial Arrest and Detention**

2 74. Tenorio-Serrano was arrested by Flagstaff Police on December 11, 2017 and
3 charged with four criminal counts related to driving while under the influence of
4 alcohol.

5 75. All four criminal counts are alleged violations of Arizona criminal statutes.

6 76. On December 11, 2017, Tenorio-Serrano was booked into CCDF on the local
7 charges described above.

8 77. At no time did Coconino County officials bring federal criminal charges
9 against Tenorio-Serrano.

10 78. At no time since December 11, 2017 have federal authorities brought federal
11 criminal charges against Tenorio-Serrano.

12 79. Upon information and belief, at no time since December 11, 2017 have
13 federal authorities communicated to CCSO personnel that there is probable cause to
14 believe that Tenorio-Serrano has violated any federal criminal laws.

15 80. Upon information and belief, there are no outstanding criminal warrants from
16 other jurisdictions for Tenorio-Serrano's arrest.

17 81. Upon information and belief, during all times relevant to this action, no
18 federal or state official has established probable cause to believe Tenorio-Serrano
19 has violated a federal criminal statute.
20
21

1 **IV. ICE Involvement in Mr. Tenorio-Serrano's Case**

2 82. On or about December 12, 2017, ICE officials in Phoenix, Arizona became
3 aware that Tenorio-Serrano was in the custody of CCSO.

4 83. On December 12, 2017, ICE officials in Phoenix, Arizona faxed two
5 documents to CCDF related to Tenorio-Serrano: one document entitled "Department
6 of Homeland Security Immigration Detainer – Notice of Action" and imprinted with
7 the form number "I-247A," and a second document entitled "U.S. Department of
8 Homeland Security Warrant for Arrest of Alien" and imprinted with the form
9 number "I-200." Both documents are standard ICE forms and are attached as Exhibit
10 D.

11 84. Aside from the two documents referenced above, CCSO received no other
12 documents from ICE related to Plaintiff Tenorio-Serrano.

13 **A. Form I-247A: ICE Detainer Request**

14 85. Form I-247A provided to CCDF on December 12, 2017 states ICE has
15 determined that there exists "probable cause" to believe that Mr. Tenorio-Serrano is
16 "a removable alien". Exhibit D.

17 86. Form I-247A nowhere indicates that ICE has established probable cause to
18 believe that Mr. Tenorio-Serrano violated any criminal laws.

19 87. Nowhere on Form I-247A appear the words "misdemeanor" or "felony."

20 88. Form I-247A is signed by an ICE "deportation officer" with the surname
21 Wagstaff.

1 89. At all times relevant to this complaint, Officer Wagstaff was an employee of
2 ICE.

3 90. ICE is a federal law enforcement agency.

4 91. At all times relevant to this complaint, Officer Wagstaff was a federal law
5 enforcement officer.

6 92. Officer Wagstaff, at the time he or she prepared the Form I-247A at issue in
7 this action, was acting as a law enforcement officer employed by ICE.

8 93. Officer Wagstaff, at the time he or she prepared the Form I-247A at issue in
9 this action, was not acting as a “neutral and detached magistrate,” as that term is
10 understood within the Fourth Amendment jurisprudence.

11 **B. Form I-200: ICE Administrative Warrant**

12 94. Form I-200 is titled a “warrant for arrest of alien” and was signed by Barry
13 Jansen, an “authorized immigration officer” employed by ICE. Exhibit D.

14 95. Form I-200 is addressed to “any immigration officer authorized pursuant to
15 Sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8,
16 Code of Federal Regulations, to serve warrants of arrest for immigration violations.”
17 Exhibit D.

18 96. Neither CCDF nor CCSO employs anyone who meets the criteria of “any
19 immigration officer authorized pursuant to Sections 236 and 287 of the Immigration
20 and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve
21 warrants of arrest for immigration violations.” Exhibit D.

1 97. Upon information and belief, at all times relevant to this action, there have
2 been no other state or federal law enforcement officers who meet the criteria
3 described above stationed at CCDF, or otherwise authorized to perform functions on
4 behalf of CCSO

5 98. Neither CCSO nor CCDF participate in the federal program known as
6 “287(g),” which authorizes local law enforcement officers of participating agencies
7 to perform certain immigration-related tasks.

8 99. Form I-200 does not articulate any reasonable suspicion or probable cause to
9 believe Mr. Tenorio-Serrano violated any criminal laws.

10 100. Neither the word “misdemeanor” nor the word “felony” appear
11 anywhere on the standard Form I-200 provided to CCDF.

12 101. Barry Jansen, whose signature appears on the Form I-200 provided to
13 CCDF, is a federal law enforcement officer and an employee of ICE.

14 102. Barry Jansen, at the time he signed the Form I-200, was not acting as a
15 “neutral and detached magistrate,” as that term is defined by Fourth Amendment
16 jurisprudence.

17 103. Form I-200 was not signed by a judge.

18 104. Form I-200 was not signed by an employee of the judicial branch at
19 either the state or federal level.

20 105. Form I-200 was not signed by an administrative law judge.
21

1 106. Form I-200 was issued by an executive official involved in the
2 investigation of Mr. Tenorio-Serrano's immigration status.

3 107. Form I-200 was not supported by the oath or affirmation of any
4 government official, neutral or otherwise.

5 108. ICE has admitted in public court filings in other lawsuits that "ICE's
6 detainer policy does not require its agents to obtain a determination of probable
7 cause from a detached and neutral magistrate." *See Jimenez-Moreno v. Johnson*,
8 1:11-cv-05452 (N.D. Ill.), Dk. #219 (Feb. 9, 2016).

9 109. Form I-200 states probable cause was founded upon "statements made
10 voluntarily by the subject to an immigration officer and/or other reliable evidence"
11 but does not indicate which of the two (or both) purportedly establishes probable
12 cause in this instance.

13 110. ICE has a well-documented history of unreliability in determining
14 which jail inmates may be subject to removal. For example, between 2003 and
15 2015, ICE issued detainers to CCSO on three occasions for individuals who were
16 later proven to be U.S. citizens and not deportable. During the same time period,
17 ICE issued detainers to the Maricopa County Sheriff's Office 265 times for
18 individuals later proven to be U.S. citizens.¹

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20
21

¹ Data from FOIA requests submitted to ICE: <http://trac.syr.edu/phptools/immigration/detain/>

1 111. According to public court filings in other litigation, ICE
2 “acknowledges there are ‘big gaps’ in CIS naturalization information,” one of the
3 key databases ICE personnel must consult prior to deciding whether there is
4 probable cause to believe a jail inmate is removable. *See, e.g., Roy, et al. v. County*
5 *of Los Angeles, et al.*, 2:12-cv-09012 (C.D. Cali.), Dk. #278 (Plaintiffs’ Opposition
6 to Defendants’ Motion for Summary Judgment). A copy of this document is attached
7 as Exhibit E.

8 112. ICE itself estimates that two of the immigration-related databases it
9 frequently consults to make determinations of probable cause produce errors
10 approximately 30% of the time. *Id.*

11 113. During all times relevant to this action, Defendant Jim Driscoll knew
12 or should have known of these inadequacies within ICE’s system for making
13 probable cause determinations, as many of these details were pointed out to him in
14 the September 28, 2017 letter attached as Exhibit C.

15 114. At all times relevant to this action, Defendant Jim Driscoll knew or
16 should have known CCSO has no constitutional authority to continue Plaintiff
17 Tenorio-Serrano’s detention for up to forty-eight additional hours after receiving
18 cash bail on Plaintiff Tenorio-Serrano’s local charges, due to the facts asserted
19 above.

20 115. At all times relevant to this action, Defendant Jim Driscoll knew or
21 should have known his agency bears independent legal responsibility for ensuring it

1 is detaining jail inmates in a lawful manner and that his agency cannot hide behind
2 representations or requests made by a federal law enforcement agency.

3 **V. CCSO's Detention of Mr. Tenorio-Serrano**

4 116. On December 12, 2017, the Flagstaff Justice Court set bail on Tenorio-
5 Serrano's misdemeanor charges in the amount of \$2,000. A copy of these release
6 conditions is attached as Exhibit F.

7 117. The Flagstaff Justice Court derived its authority to set conditions of
8 release from A.R.S. § 13-3967 and from Article II, Section 22 of the Arizona
9 Constitution, as Tenorio-Serrano is a pre-trial detainee facing state misdemeanor
10 charges within the Flagstaff Justice Court's jurisdiction.

11 118. The \$2,000 bail was the only condition of release the Flagstaff Justice
12 Court set. Exhibit F.

13 119. The Release Conditions attached as Exhibit F are still in force at this
14 time and have not been rescinded, modified, superseded or otherwise amended since
15 the initial issuance on December 12, 2017.

16 120. On December 12, 2017, just hours after the Flagstaff Justice Court set
17 bail on the local charges, Ms. Sarai Tenorio-Serrano visited CCDF to inquire
18 whether Plaintiff would be released upon payment of the \$2,000 bail. An Affidavit
19 from Ms. Tenorio-Serrano is attached as Exhibit G.

20 121. The on-duty CCDF employee informed Ms. Tenorio-Serrano that
21 Plaintiff was indeed being held on \$2,000 bail but that payment of such bail would

1 not result in Plaintiff's release into the community due to the existence of an "ICE
2 detainer." Exhibit G.

3 122. On December 15, 2017, Mr. Joseph Cabell Breckinridge attempted to
4 post cash bail on behalf of Plaintiff at CCDF with a personal credit card that had
5 more than \$2,000 in available credit. An Affidavit from Mr. Breckinridge is attached
6 as Exhibit H.

7 123. Prior to tendering his personal credit card, Mr. Breckinridge verbally
8 confirmed with the CCSO employee on duty that Plaintiff was being held as a pre-
9 trial detainee on \$2,000 bail. Exhibit H.

10 124. The on-duty CCSO employee, Ms. Ormsby, informed Mr.
11 Breckinridge that it was typically the practice of CCSO to "immediately" release a
12 pre-trial detainee upon receipt of the requisite bail amount. Exhibit H.

13 125. Upon information and belief, it is typical practice for CCSO to release
14 pre-trial detainees within one hour of the requisite bail being received on the
15 detainee's behalf. In other words, upon information and belief, "immediate," for
16 CCSO release purposes, means approximately one hour.

17 126. After confirming Plaintiff was being held on \$2,000 cash bail and
18 confirming CCSO's typical practice in such circumstances, Ms. Ormsby informed
19 Mr. Breckinridge that Tenorio-Serrano would not be "immediately" released upon
20 payment of the \$2,000 bail. Exhibit H.

1 127. Ms. Ormsby explained to Mr. Breckinridge that Plaintiff would be
2 held for up to an additional 48 hours after Mr. Breckinridge posted the bail. Exhibit
3 H.

4 128. Ms. Ormsby explained to Mr. Breckinridge that this additional delay
5 was due exclusively to the existence of what the on-duty employee referred to as an
6 “ICE hold.” Exhibit H.

7 129. Ms. Ormsby explained to Mr. Breckinridge that the additional delay in
8 Tenorio-Serrano’s release was in order to allow ICE sufficient time to take custody
9 of Tenorio-Serrano. Exhibit H.

10 130. Mr. Breckinridge would have tendered the full bail amount and
11 completed the transaction on December 15, 2017, but for Ms. Ormsby’s verbal
12 representations. Exhibit H.

13 131. Ms. Ormsby presented Mr. Breckinridge (and by extension Plaintiff)
14 with an impossible choice: either tender the \$2,000 bond money and trigger the 2017
15 Jail Policy resulting in an almost certain prolongation of up to 48 hours or not tender
16 the bond money and Plaintiff would remain in custody until his trial date.

17 132. The actions and representations made by Ms. Ormsby on December
18 15, 2017 are consistent with the 2017 Jail Policy described above and attached as
19 Exhibit A.

133. Upon information and belief, the representations made by the on-duty CCSO staff on December 12, 2017 and again by Ms. Ormsby on December 15, 2017 are drawn from the 2017 Jail Policy.

134. Absent the 2017 Jail Policy, Mr. Tenorio-Serrano would have been released from pre-trial detention no later than December 15, 2017. For this reason, the 2017 Jail Policy was the moving force behind Mr. Tenorio-Serrano's constitutional deprivations.

135. Plaintiff Tenorio-Serrano has now been unlawfully detained by Defendants approximately four months longer than he would have if Defendants had processed his bail in a lawful manner.

CLASS ACTION ALLEGATIONS

136. Pursuant to Fed. R. Civ. P. 23, Plaintiff brings this injunctive class action and seeks certification of the claims and certain issues in this action on behalf of a Class defined as:

All current and future pre-trial detainees of Coconino County Detention Facility who currently are or will be the subject(s) of an ICE detainer request sent to Defendants (except those pre-trial detainees not eligible for bail under Article II, Section 22 of the Arizona Constitution).

(Hereinafter, the “Class”).

137. Plaintiff reserves the right to amend the Class definition if further investigation and discovery indicates the Class definition should be narrowed, expanded, or otherwise modified.

1 138. Plaintiff brings this class action pursuant to Rule 23(b)(2) and only as
2 to Counts One and Two of this Complaint. Consequently, Plaintiff seeks class
3 treatment only to the extent that he is seeking injunctive and declaratory relief from
4 this Court. Count Three of this Complaint, alleging violations under 42 U.S.C. §
5 1983, is expressly excluded from class treatment.

6 139. Defendants' practices and omissions giving rise to this action are being
7 applied uniformly to all members of the Class.

8 140. Absent relief granted by this Court, all future members of the Class
9 will be treated similarly to Plaintiff and similarly to one another.

10 141. All members of the Class are and will be similarly affected by
11 Defendants' unconstitutional practices.

12 142. Based upon public records available at this time, it is apparent that the
13 number of Class members is so large as to make joinder impractical, if not
14 impossible.

15 143. Plaintiff seeks class certification of a class composed of individuals
16 currently being harmed and individuals who will be harmed in the future. Therefore
17 joinder is impracticable, in part, because there is an unknown number of future
18 members of the proposed class in this injunctive/declaratory class action.

19 144. The claims asserted by Plaintiff in this action are typical of the claims
20 of the members of the Class, as the claims arise from the same course of conduct by
21

1 Defendants, and the relief sought within the Class is common to the members of the
2 Class.

3 145. A common answer as to the legality of Defendants' practices and
4 policies will drive resolution of the overall litigation.

5 146. Plaintiff will fairly and adequately represent and protect the interests
6 of the members of the Class, as he shares a common interest with the absent class
7 members – namely, to stop Defendants' unconstitutional practices, which will harm
8 class members in the same manner they have and, currently are, harming Plaintiff.

9 147. Neither Plaintiff nor proposed class counsel seek financial gain at the
10 cost of absent class members' rights, and accordingly Plaintiff lacks any antagonism
11 with the proposed class and Plaintiff's interests align squarely with other proposed
12 class members.

13 148. Plaintiff's counsel (who will seek to be appointed as class counsel) is
14 highly qualified, has experience both with complex litigation and with legal matters
15 related to immigration, has the resources to devote to representing the class, and will
16 fairly and adequately represent the interests of the class.

17 149. Plaintiffs meet the requirements of Rule 23(b)(2), Fed. R. Civ. P., as
18 Plaintiff complains of a pattern or practice that is generally applicable to the class as
19 a whole. Consequently, injunctive and declaratory relief can be granted only as to
20 all the class members or as to none of them.

**On Behalf of Plaintiff and Class Members and Against Defendants Driscoll,
Figueroa, Ryan, Fowler, Parks, Archuleta, and Babbott**

151. Plaintiff restates and incorporates herein by reference the allegations contained in the preceding paragraphs of this Complaint.

152. The allegations described above constitute violations of Plaintiff's rights pursuant to the Fourth Amendment and Fourteenth Amendment to the United States Constitution and Article II, Section 8 of the Arizona Constitution.

153. Plaintiff can demonstrate both a likelihood of success on the merits and a probability (not merely possibility) of irreparable harm if the Court does not grant relief.

154. Plaintiff can show that there will be no hardship to Defendants if relief is granted, and that Plaintiff will suffer immeasurably if this Court does not grant relief.

COUNT 2

(Declaratory Relief)

**On Behalf of Plaintiff and Class Members and Against Defendants Driscoll,
Figueroa, Ryan, Fowler, Parks, Archuleta, and Babbott**

155. Plaintiff restates and incorporates herein by reference the allegations contained in the preceding paragraphs of this Complaint.

156. This case presents an actual controversy within the jurisdiction of this Court.

157. The allegations described above constitute violations of Plaintiff's rights pursuant to the Fourth and Fourteenth Amendments to the United States Constitution and Article II, Section 8 of the Arizona Constitution.

COUNT 3

Violation of Fourth and Fourteenth Amendments to the U.S. Constitution

42 U.S.C. § 1983

158. Plaintiff restates and incorporates herein by reference the allegations contained in the preceding paragraphs of this Complaint.

159. References to Plaintiff's rights under the Fourth Amendment to the U.S. Constitution include the Fourth Amendment as applied to the states through the Fourteenth Amendment.

1 160. Defendant Driscoll either promulgated the 2017 Jail Policy or ratified
2 the 2017 Jail Policy after having delegated the authority to promulgate such policy
3 to Defendant Figueroa.

4 161. Defendants' promulgation and implementation of the 2017 Jail Policy
5 violates Plaintiff's rights under the Fourth and Fourteenth Amendments to the U.S.
6 Constitution.

7 162. The 2017 Jail Policy proximately caused Plaintiff's constitutional
8 deprivations.

9 163. The 2017 Jail Policy was the "but for" cause of Plaintiff's
10 constitutional deprivations, as employees of CCDF and CCSO implemented the
11 provisions of the 2017 Jail Policy, thereby causing Plaintiff's deprivations.

12
13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff respectfully requests this Court enter judgment in
15 his favor and against Defendants, and award the following relief:

- 16 A. Certify Count 1 (seeking injunctive relief) and Count 2 (seeking declaratory
17 relief) of this action as a class action, pursuant to Rule 23(a) and 23(b)(2),
18 Fed. R. Civ. P.;
- 19 B. Include in such Order an award of attorneys' fees and non-taxable costs,
20 pursuant to Rule 23(g)(1)(D) and 23(h), Fed. R. Civ. P.;
- 21

1 C. Appoint undersigned counsel as class counsel, pursuant to Rule 23(g), Fed. R.
2 Civ. P.;

3 D. Declare the provisions of Defendants' 2017 Jail Policy permitting CCSO
4 employees to hold certain pre-trial detainees for up to 48 additional hours
5 beyond the time such pre-trial detainees have met all conditions of pre-trial
6 release to be in violation of Article II, Section 8 of the Arizona Constitution,
7 both facially and as applied to Plaintiff;

8 E. Declare the provisions of Defendants' 2017 Jail Policy permitting CCSO
9 employees to hold certain pre-trial detainees for up to 48 additional hours
10 beyond the time such pre-trial detainees have met all conditions of pre-trial
11 release to be in violation of the Fourth Amendment to the United States
12 Constitution, both facially and as applied to Plaintiff;

13 F. Declare the Form I-200 provided to CCSO by ICE on December 12, 2017 is
14 not sufficient to meet the requirements of Article II, Section 8 of the Arizona
15 Constitution and the Warrant Clause of the Fourth Amendment to the United
16 States Constitution;

17 G. Declare the current version of ICE's Form I-200 is not a lawful warrant upon
18 which Defendants are entitled to rely;

19 H. Preliminarily and permanently enjoin Defendants, their officers, agents,
20 servants, and employees under Count 1 from holding or otherwise detaining
21

1 Plaintiff more than sixty minutes beyond the moment CCSO receives the bail
2 amount set by the Flagstaff Justice Court on December 12, 2017;

3 I. Preliminarily and permanently enjoin Defendants, their officers, agents,
4 servants, and employees under Count 1 from holding or otherwise detaining
5 Class Members beyond the time that Class Members satisfy all conditions of
6 pre-trial release, as set by the applicable Arizona court with jurisdiction to set
7 such conditions;

8 J. Award Plaintiff his costs and reasonable attorneys' fees in this action,
9 pursuant to 42 U.S.C. § 1988(b);

10 K. Grant Plaintiff and Class Members such other relief as this Court may deem
11 just and proper.

12 L. In the event Plaintiff is entitled under applicable law to a jury trial on any
13 issues in dispute, Plaintiff requests a trial by jury.

14 DATED: April 30, 2018.

15 ASPEY WATKINS & DIESEL, PLLC

16
17 /s/Kathryn G. Mahady
18 Kathryn G. Mahady
19 *Attorney for Plaintiff*
20
21

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2018, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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/S/ KATHRYN G. MAHADY