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15 **Pro hac vice admission pending*
16 ***Admitted pursuant to Ariz. Sup. Ct. R.*
17 *38(f)*

18 **IN THE UNITED STATES DISTRICT COURT**
19 **FOR THE DISTRICT OF ARIZONA**

20 MARIA DEL ROSARIO CORTES
21 CAMACHO,

21 *Plaintiff,*

22 vs.

23 CHAD LAKOSKY, KRISTINA
24 STOLTZ, and DOES 1-10, in their
25 individual capacities, SHERIFF PAUL
26 BABEU in his official capacity, and
27 PINAL COUNTY,

28 *Defendants.*

CASE NO. 14-CV-02132-JJT

FIRST AMENDED COMPLAINT

INTRODUCTION

1
2 1. This is a civil rights action on behalf of Maria del Rosario Cortes Camacho,
3 an immigrant who was unlawfully detained and arrested by deputies of the Pinal County
4 Sheriff’s Office (“PCSO”). Ms. Cortes¹, the mother of three young children and a
5 survivor of domestic violence, is authorized to work and live in the United States through
6 a U-visa.²

7 2. On September 29, 2012, Ms. Cortes was driving home when she was pulled
8 over by a Pinal County Sheriff’s Office deputy, Defendant Carl Lakosky, ostensibly for a
9 “cracked windshield.” When asked for identification and her immigration papers, Ms.
10 Cortes provided Deputy Lakosky her full name and explained that she had a pending U-
11 visa application, a copy of which was in her glove compartment. Deputy Lakosky
12 responded that he was not interested in those papers.

13 3. Ultimately, a second PCSO Deputy, Defendant Kristina Stoltz arrived at the
14 scene, handcuffed Ms. Cortes, locked her in the back of a patrol car, and transported her
15 against her will to a U.S. Customs and Border Patrol office, where she remained
16 separated from her children and not released from custody for five days.

17 4. Defendants Lakosky and Stoltz unlawfully detained Ms. Cortes without any
18 additional justification after the original purpose of the stop was completed, and beyond a
19 reasonable time required to issue her citation, solely on the basis of her suspected or
20 actual immigration status, and unlawfully arrested her by involuntarily transporting her
21 under restraint from the location of the stop.

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¹ Cortes is Plaintiff’s legal surname.

25 ² “The U nonimmigrant status (U visa) is set aside for victims of certain crimes
26 who have suffered mental or physical abuse and are helpful to law enforcement or
27 government officials in the investigation or prosecution of criminal activity.” *See*
28 *U.S.C.I.S., Victims of Criminal Activity, available at*
<http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

1 5. Deputy Lakosky and Deputy Stoltz’s actions were made pursuant to a
2 custom, policy, or practice of Defendant Pinal County. Pinal County Sheriff Paul Babeu
3 has final policy-making and supervisory authority for PCSO, and is the final decision-
4 maker for Pinal County in the area of law enforcement. He has publicly approved of the
5 deputies’ actions involving Ms. Cortes as described in this Complaint, stating, “Our
6 deputies took the exact actions as what is required by law.” Sheriff Babeu has further
7 stated that Deputies Lakosky and Stoltz “complied with the SB1070 law and the later
8 rulings by the United States Supreme Court.”

9 6. Defendants’ unlawful detention and arrest of Ms. Cortes occurred shortly
10 after Arizona’s S.B. 1070 law went into effect. Arizona Revised Statutes § 11-1051(B),
11 also known as Section 2(B) of S.B. 1070, requires state and local law enforcement
12 officials, “where reasonable suspicion exists that the person is an alien and is unlawfully
13 present in the United States” to make a “reasonable attempt . . . when practicable, to
14 determine the immigration status of the person” Arizona Revised Statutes § 11-
15 1051(D), also known as Section 2(D) of S.B. 1070, states in relevant part,
16 “Notwithstanding any other law, a law enforcement agency may securely transport an
17 alien who the agency has received verification is unlawfully present in the United States
18 and who is in the agency’s custody to a federal facility in this state or to any other point
19 of transfer into federal custody that is outside the jurisdiction of the law enforcement
20 agency.”

21 7. To the extent that the deputies prolonged her detention and transported her
22 to Border Patrol pursuant to S.B. 1070, the application of that statute to Ms. Cortes was
23 unconstitutional.

24 8. Plaintiff brings this action under the Fourth Amendment to the United
25 States Constitution and 42 U.S.C. § 1983.
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JURISDICTION AND VENUE

9. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

10. Venue is proper under 28 U.S.C. § 1391(b) because the events or omissions giving rise to Plaintiff’s claims occurred in the District of Arizona.

PARTIES

11. Plaintiff Cortes is a thirty-one year old Mexican national and U-visa holder. She is and was at all times relevant to this Complaint a resident of Eloy, Arizona.

12. Defendant Deputy Chad Lakosky was at all times relevant to this Complaint a deputy officer for the Pinal County Sheriff’s Office (“PCSO”). The traffic citation that Ms. Cortes received identifies Deputy Lakosky as the initial detaining officer. At all times relevant to this Complaint, Deputy Lakosky was acting within the scope and course of his employment with PCSO. Defendant Lakosky is sued in his individual capacity.

13. Defendant Deputy Kristina Stoltz was at all times relevant to this Complaint a deputy officer for the PCSO. The radio log of Ms. Cortes’ detention, obtained from PCSO through a public records act request, identifies Deputy Stoltz as the second officer involved in Ms. Cortes’ unlawful detention and arrest. At all times relevant to this Complaint, Deputy Stoltz was acting within the scope and course of her employment with PCSO. She is sued in her individual capacity.

14. Defendants “Does 1-10” are individuals whose identities are not currently known to Plaintiff and who by their actions caused Ms. Cortes’ unlawful detention and arrest. They are sued in their individual capacities. Upon information and belief, they are and were at all relevant times agents, officers, employees, or otherwise representatives of PCSO.

15. Defendant Paul Babeu is the Sheriff of Pinal County, Arizona, and is sued in his official capacity. Arizona law charges county sheriffs with conducting law enforcement activities on behalf of the county. As such, Defendant Babeu is the final

1 decision-maker for Pinal County in the area of law enforcement, and is responsible for
2 setting and implementing the policies and practices of the Pinal County Sheriff's Office,
3 including but not limited to creating and regulating department customs, policies, and
4 practices regarding the stops and arrests and related treatment of individuals in motor
5 vehicles in Pinal County.

6 16. Defendant Pinal County is a political subdivision of the state of Arizona
7 that can sue and be sued in its own name.

8 17. At all times relevant to this Complaint, all Defendants were acting under
9 the color of law.

10 **FACTS**

11 18. Plaintiff Maria Cortes has resided in Eloy, Arizona since 2005 and is the
12 mother of three children, ages twelve, seven, and five. The two youngest children are
13 U.S. citizens, and the oldest has derivative status through Ms. Cortes' U-visa. At all
14 times relevant to this Complaint, Ms. Cortes had full legal and physical custody of her
15 three children.

16 19. Ms. Cortes suffered horrific acts of domestic violence at the hands of her
17 former husband, including multiple punches to her face and choking. These attacks took
18 place in front of her children and resulted in serious physical and psychological injury,
19 including Post-Traumatic Stress Disorder and depression.

20 20. Based on her husband's abuse and her cooperation with the Eloy Police
21 Department and the Pinal County Attorney's Office in his prosecution, Ms. Cortes
22 applied for a U-visa on February 3, 2012.

23 21. Plaintiff's U-visa application was pending at the time she was pulled over
24 by Defendant Lakosky as described herein; she had documentation of the application
25 with her when she was stopped. On July 18, 2013, U.S. Citizenship and Immigration
26 Services granted her application and she currently has a U-visa and authorization to live
27 and work in the United States.

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1 22. On the morning of September 29, 2012, as Ms. Cortes was driving home in
2 Eloy, Arizona, Defendant Lakosky stopped her vehicle. Deputy Lakosky informed Ms.
3 Cortes that she was stopped for having a broken windshield. He asked Ms. Cortes for her
4 driver's license, and she replied that she did not have one. He then asked if she had a
5 visa, and she told him that she had a pending U-visa application and that a copy was in
6 her glove compartment. Deputy Lakosky replied that he was not interested in seeing her
7 application, told her, "one moment," and then returned to his squad car. Upon
8 information and belief, he then checked her name against a law enforcement or Arizona
9 Motor Vehicles Department database, which confirmed her identity, and then called for
10 backup.

11 23. Several minutes later, Defendant Stoltz arrived on the scene in her squad
12 car and instructed Ms. Cortes to exit her vehicle. She then performed a pat-down of Ms.
13 Cortes before handcuffing her and locking her in the back of her squad car in order to
14 investigate her immigration status.

15 24. At no time during the stop did these Defendants have either probable cause
16 or reasonable suspicion that Ms. Cortes was involved in criminal activity and at no time
17 was Ms. Cortes told that she was under arrest for any reason. At no time during the stop
18 did Ms. Cortes believe that she was free to leave the scene.

19 25. While handcuffed in the back of the patrol car, Deputy Stoltz asked Ms.
20 Cortes about her immigration status, to which Ms. Cortes responded that she had a
21 pending U-visa application, and that a copy was available in her glove compartment.

22 26. Without her express or implied consent, Defendant Stoltz then transported
23 Ms. Cortes to the U.S. Customs and Border Patrol ("CBP") office in Casa Grande,
24 Arizona (about 13 miles away from the site of the traffic stop). When they arrived,
25 Defendant Stoltz finally gave Ms. Cortes a traffic citation, signed by Defendant Lakosky,
26 and left.

27 27. The citation refers to three civil traffic violations: a cracked windshield,
28 driving without a license, and failing to show proof of insurance. Deputy Lakosky's

1 narrative report states that Ms. Cortes was “cited and released” with no mention of her
2 handcuffing and arrest by PCSO, or transportation to and continued detention by CBP.

3 28. The final entry in the radio log, made by Deputy Stoltz, was more than an
4 hour after Deputy Lakosky had originally stopped Ms. Cortes.

5 29. The prolonged detention of Ms. Cortes without any lawful authority, after
6 the original purpose of the traffic stop had been completed, violated her Fourth
7 Amendment right to be free from unreasonable seizure.

8 30. This detention caused harms to Ms. Cortes, including violation of her
9 constitutional rights, improper loss of liberty, and emotional distress.

10 31. These Defendants’ actions in handcuffing Ms. Cortes, locking her in the
11 patrol car, and transporting her involuntarily to the CBP office constituted an arrest
12 unsupported by probable cause, in violation of the Fourth Amendment.

13 32. This arrest caused harms to Ms. Cortes including violation of her
14 constitutional rights, improper loss of liberty, and emotional distress.

15 33. These Defendants were apparently unaware and had not been adequately
16 trained by the PCSO that the extension of a stop for a period longer than required to
17 complete the purpose for the initial stop constituted an unreasonable seizure.

18 34. These Defendants were apparently unaware and had not been adequately
19 trained by the PCSO that suspicion or knowledge of a person being in the U.S.
20 unlawfully could *not* serve as the basis for reasonable suspicion to extend a stop or
21 probable cause to make an arrest.

22 35. These Defendants were apparently unaware and had not been adequately
23 trained by the PCSO that handcuffing and involuntary transportation to a different
24 location was an arrest requiring probable cause of involvement in a crime.

25 36. These Defendants unlawfully transferred Plaintiff to the custody of federal
26 immigration agents, who detained her for an additional five days until October 4, 2012,
27 during which time she was separated from her children, causing her great anxiety and
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1 emotional distress; these injuries were exacerbated by the continuing disorders resulting
2 from the domestic violence she suffered.

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4 **COUNT I**

5 **Fourth Amendment – Extended Detention (42 U.S.C. § 1983)**

6 37. Plaintiff incorporates by reference the foregoing allegations as if fully set
7 forth herein.

8 38. The Fourth Amendment to the U.S. Constitution prohibits “unreasonable
9 searches and seizures.”

10 39. Defendant deputies prolonged the detention of Plaintiff after the original
11 purpose of the stop was completed and/or beyond the time reasonably required to
12 complete the lawful purpose of the stop. Pursuant to Arizona Revised Statutes § 13-
13 3903, local law enforcement officials, such as these Defendants, have discretion to cite a
14 person in lieu of detention for certain minor misdemeanors, such as the traffic violations
15 here. After citing and releasing Plaintiff for minor traffic violations, these Defendants
16 detained her without any lawful justification and solely on the basis of their belief or
17 suspicion that she was unlawfully present in the United States.

18 40. Plaintiff Cortes suffered loss of fundamental rights and her liberty, as well
19 as emotional distress, as a result of this action by these Defendants.

20 41. It is not a crime for a removable alien to remain present in the United
21 States. Therefore, Defendant deputies’ belief or suspicion that Plaintiff was unlawfully
22 present in the United States, or desire to investigate her immigration status, did not
23 provide constitutional justification for detaining Plaintiff.

24 42. By extending Plaintiff’s detention without reasonable suspicion or probable
25 cause to believe Plaintiff was engaged in criminal activity after the original purpose of
26 the stop was completed and/or beyond the time reasonably required to complete the
27 lawful purpose of the stop, these Defendants effected an unreasonable seizure of Plaintiff
28 in violation of the Fourth Amendment.

1 those directly involved in, and/or by participating in or being deliberately indifferent to
2 the unlawful actions committed against Plaintiff.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff requests that this Court:

- 5 a. Award compensatory and punitive damages against all Defendants for the
6 above violations of the United States Constitution;
- 7 b. Award prejudgment interest on any award of damages to the extent
8 permitted by law;
- 9 c. Award reasonable attorney's fees and costs, pursuant to 42 U.S.C. § 1988
10 and any other applicable law;
- 11 d. Grant such other relief as the Court may deem appropriate.

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13 RESPECTFULLY SUBMITTED on this 26th day of September 2014.

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15 /s/ Christine P. Sun
16 AMERICAN CIVIL LIBERTIES UNION
17 FOUNDATION IMMIGRANTS' RIGHTS
PROJECT

18 /s/ Daniel J. Pochoda
19 ACLU FOUNDATION OF ARIZONA

20 *Attorneys for Plaintiff*
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