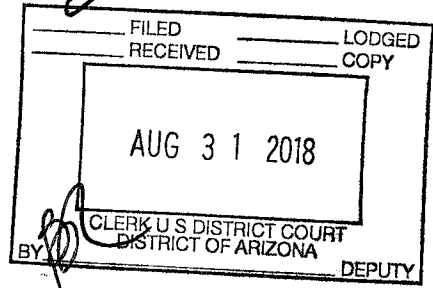


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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

WADE TRAVIS WEBB )

Plaintiff, )

vs. )

PIMA COUNTY; )  
FORMER SHERIFF CLARENCE DUPNIK; )  
FORMER SHERIFF CHRIS NANOS; )  
SHERIFF MARK NAPIER; )  
DETECTIVE JEFFREY CASTILLO; )  
COUNTY ATTORNEY BARBARA LAWALL, )

Defendants. )

) No. 18-CV-00268-TUC-FRZ  
)  
)  
) PLAINTIFFS MOTION FOR  
) RELIEF FROM JUDGMENT

**PLAINTIFFS RELIEF FROM JUDGMENT PURSUANT TO F.R.C.P. 60(b)(6)**

Plaintiff requests that the Court vacate the Order to dismiss this case as Plaintiff is in compliance with the Order to amend the complaint. The circumstances that preceded Plaintiff's case is rare and it is of the utmost importance that the rights of citizens of the United States are not trampled upon at will by any person or any entity. Plaintiff cannot be denied his fundamental right to hold the defendants accountable.



1 reason or was dictated by an intimidating power or by malice or ill will.” *Wood v.*  
2 *Georgia*, 370 U.S. 375, 390 (1962)

3 “The importance of the grand jury cannot be underestimated: In the federal  
4 system and many States, a felony cannot be charged without the consent of community  
5 representatives, a vital protection from unwarranted prosecutions.” *Rehburg v. Paulk*, 132  
6 S.Ct. 1497, 1508 (2012) (footnote 3)

7 Plaintiff raised the violation of the due process clause of the 14<sup>th</sup> Amendment in  
8 his motion to remand. The PCAO had the opportunity to challenge Webb’s claims but  
9 did not file any opposition to his claims and dismissed the case in open court at a case  
10 management conference thereby vacating the scheduled hearing and not defending  
11 themselves against Webb’s claims once again. Webb was never contacted by anyone in  
12 Pima County and was never offered restitution by anyone in Arizona even though the  
13 severity of Webb’s claims are clearly acknowledged by the United States Supreme Court  
14 as fundamental rights of every United States citizen.

15 Webb, unfortunately, cannot bring criminal charges against anyone involved in his  
16 criminal case so his only recourse is a civil suit which the Court is denying him thereby  
17 unjustly allowing his violators a free pass by never defending themselves against Webb’s  
18 claims which is clearly not the intent of the United States Supreme Court.

19 Webb’s claims against defendants are brought via the section one of the 14<sup>th</sup>  
20 Amendment which states “All persons born or naturalized in the United States, and  
21 subject to the jurisdiction thereof, are citizens of the United States and of the state  
22 wherein they reside. No state shall make or enforce any law which shall abridge the  
23 privileges or immunities of citizens of the United States; nor shall any state deprive any  
24 person of life, liberty, or property, without due process of law; nor deny to any person  
25 within its jurisdiction the equal protection of the laws.”

26 Webb’s claims against defendants are also brought via Title 42 U.S.C. § 1983  
27 which states “Every person who, under color of any statute, ordinance, regulation,  
28 custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the

1 United States...to the deprivation of any rights, privileges, or immunities secured by the  
2 Constitution and laws, shall be liable to the party injured in an action at law.

3 Title 42 U.S.C. § 1983 is intended to allow United States citizens that have  
4 violable evidence that they may have been unconstitutionally wronged, which Webb  
5 does, by government entities and employees and to hold them liable. A “person” in §  
6 1983 is defined in Title 42 § 2000(e) - “includes one or more individuals, governments,  
7 governmental agencies,” which is exactly who Webb has named as defendants and is  
8 exactly the same defendants that would be responsible under the 14<sup>th</sup> Amendment.

9 Deputy County Attorney (DCA) Michelle Chamblee, in this case, has absolute  
10 immunity at a Grand Jury Hearing as do Grand Jury witnesses regarding testimony.  
11 Since they cannot be sued, unlike their private predecessors, they enjoy absolute  
12 immunity which gives them a free pass in today’s system even absent probable cause.  
13 *Rehburg* at 1503-1504.

14 Similar are Grand Jury witnesses that may be detectives or lead investigators. A  
15 detective or lead investigator may want an indictment to the point of sacrificing a proper  
16 investigation. However, since a DCA is responsible for actually signing the indictment,  
17 hence a Grand Jury Hearing, with absolute immunity, then that will allow a free pass for  
18 the detective that may be the sole witness as in Detective Castillo’s case. *Rehburg* at  
19 1508.

20 The United States Supreme Court has acknowledged in *Rehburg* the advantages  
21 and inherent dangers of grand jury hearings as there is not a Judge present and any and all  
22 witnesses as well as the prosecutor enjoy immunity even absent probable cause.

23 The bottom line is it takes two to tango in order for Webb to be indicted on the  
24 felony stalking charge and while DCA Chamblee and DCA Wilson enjoy absolute  
25 immunity during the entirety of Webb’s case, not just the grand jury hearing, Castillo  
26 only has immunity for his testimony not the investigation.  
27  
28

1           The system is inherently flawed, if not fatally, and dangerous to United States  
2 citizens as they have no means of defending themselves until they are actually indicted on  
3 a felony charge.

4           This is in direct contradiction to the Declaration of Independence which states  
5 “that all men are created equal, that they are endowed by their Creator with certain  
6 unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.--  
7 That to secure these rights, Governments are instituted among Men, deriving their just  
8 powers from the consent of the governed, --That whenever any Form of Government  
9 becomes destructive of these ends, it is the Right of the People to alter or to abolish it,  
10 and to institute new Government, laying its foundation on such principles and organizing  
11 its powers in such form, as to them shall seem most likely to effect their Safety and  
12 Happiness.”

13           In Webb’s case it is a failure of layers of protection and takes a complete  
14 breakdown on every level. The defendants in this case each play a role as do their  
15 associated entities.

16           The Court states in Document 12 (pgs. 1-2) that “The Amended Complaint also  
17 fails to connect any direct actions by the Pima County Attorney, or any former and  
18 current Sheriffs, to any alleged constitutional violation. *See id.* Finally, the Complaint  
19 crucially omits any indication that an official Pima County policy or custom existed that  
20 caused a deprivation of Plaintiff’s rights. *See, e.g., Monell v. Dep’t of Soc. Servs. of City of*  
21 *New York*, 436 U.S. 658, 694 (1978) (holding that: “a local government may not be sued  
22 under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when  
23 execution of a government’s policy or custom, whether made by its lawmakers or by  
24 those whose edicts or acts may fairly be said to represent official policy, inflicts the  
25 injury that the government as an entity is responsible under § 1983”).

26           It would take Plaintiff having access to dozens, if not hundreds, of case files from  
27 each entity, Pima County, PCSD, and PCAO, along with policy manuals to isolate flawed  
28

1 policies, customs, or practices that would lead to the claims made against each defendant  
2 and the entities.

3         However, in absence of a yearlong investigation or longer by Plaintiff a pattern is  
4 already in existence regarding a mentally unstable person already known to the PCSD,  
5 and subsequently Pima County and the PCAO, making claims resulting in two lawsuits  
6 that alleged constitutional rights violations by the PCSD while adhering to policies,  
7 practices, and customs instituted by Sheriff Dupnik.

8         According to the complaint of case # 4:14-CV-01592-TUC-DCB, in May of 2013  
9 PCSD deputies responded to a 911 call made from William Warfe alleging that he heard  
10 a gunshot, people yelling and screaming, and a woman crying about “having to shoot  
11 him” from a nearby property. Warfe was already in a PCSD database and known as  
12 mentally unstable as Warfe had made numerous false reports via 911 calls to the PCSD  
13 starting in December 2012 from his residence in a mobile home park. In one incident  
14 Warfe was actually transported by the PCSD to a Pima County Crisis Response Center as  
15 he “heard voices in his head.”

16         The PCSD proceeded to respond to the call even though Warfe had given the  
17 operator his correct name and he was already in the database as unreliable and mentally  
18 unstable. Then, on Warfe’s guidance, multiple deputies were directed to the Larson  
19 residence where they ended up awaking the Larsons by banging on the door and  
20 screaming for the Larsons to come out of their residence around 10 PM. Robbin Larson  
21 answered the door where he was met by a deputy armed with an assault rifle pointed  
22 directly at him and telling him to come out with his hands up. Mr. Larson was only  
23 wearing undershorts. Mr. Larson complied and his wife Jill Larson was subjected to the  
24 same orders in which she complied. Ms. Larson was barefoot just like her husband and  
25 only wearing a tee shirt and underwear.

26         The Larsons were detained, handcuffed behind their back, and then placed face  
27 forward against a patrol cruiser for 45 minutes or more while two deputies entered and  
28 searched their home.



1 Warfe walked into the middle of the road and when a deputy questioned him about  
2 a lack of appearance of a violent encounter Warfe pointed to another residence and  
3 suggested that may be the location of the alleged shooting as he was unsure exactly what  
4 residence it was.

5 The PCSD deputies then took up positions behind two patrol cruisers while armed  
6 with assault rifles and handguns following the cruisers and did the same thing with the  
7 occupants of that residence, Eva Jackson, her daughter Amber, and Amber's fiancé  
8 Aaron Cole, as with Larsons including ordering them out of their residence at gunpoint as  
9 Warfe stood in the road watching.

10 The occupants of both residences were handcuffed and detained for an extended  
11 period of time and eventually released from custody.

12 The Larsons filed suit alleging constitutional rights violations on 2/10/2014 with  
13 Sheriff Dupnik and a supervising deputy, Jeffrey Reah, named as defendants. In April  
14 2016 a jury ruled in favor of the Larsons and awarded the couple \$1,250,000.

15 The Jacksons filed suit alleging constitutional rights violations, case # 4:15-CV-  
16 00052-TUC-JAS, in February 2015 against multiple PCSD personnel and Dupnik and  
17 settled in late 2017.

18 In the Larson case Dupnik and Reah were defended by Stacey Roseberry of the  
19 Pima County Attorney's Office. Ms. Roseberry also defended Dupnik and the other  
20 defendants in the Jackson case.

21 In plaintiffs case Deputy Sharp, who was already aware of Webb's 911 welfare  
22 check call referencing suicide, noted in the incident report that on the incidence table on  
23 the call before he met with Ms. Shaw at her residence that in June 2013 deputies  
24 responded to the same address referencing suicidal threats.

25 Sharp was aware before requesting to meet with Plaintiff at a PCSD substation  
26 that Ms. Shaw was suicidal 9 months prior to Webb claiming she was suicidal. Webb  
27 was asked by Deputy Sharp within a very short period of time if he had any proof that  
28 Ms. Shaw was suicidal as Ms. Shaw claimed that she had not been suicidal or had

1 suicidal thoughts since June 2013 and any pictures Webb might have would have been  
2 from June 2013. Webb did show Sharp a picture of Ms. Shaw's left wrist bleeding which  
3 included a text message in which Ms. Shaw wrote "I like to watch blood drip down my  
4 wrists in the unlikely situation that someone might actually help me because I'm clearly  
5 not brave enough to accomplish the outcome I crave." The date of the picture with the  
6 text was from February 2014.

7 Ms. Shaw was not contacted by Deputy Sharp to inquire about what Webb showed  
8 him contradicting her claims but instead did not question Ms. Shaw's statement and  
9 arrested Webb.

10 Just as with Warfe in May of 2013, Ms. Shaw was already known to the PCSD to  
11 have been suicidal but her claims were not questioned just as Warfe's claims were not  
12 questioned which led to the Larsons and Jacksons being detained at gunpoint.

13 Just 10 months after the Warfe incident another PCSD deputy exhibited similar  
14 behavior regarding a known person that had been hospitalized with the PCSD even  
15 transporting the known person to a hospital/crisis center.

16 Sheriff Dupnik's policies, practices, and customs regarding mentally unstable  
17 persons known to PCSD deputies had not changed even though only 10 months prior a  
18 serious event occurred in which innocent people were put in handcuffs and detained at  
19 gunpoint.

20 In February of 2014, one month before Webb's encounter, a constitutional rights  
21 violation lawsuit was filed in which a known mentally unstable persons claims were not  
22 questioned by the PCSD in which a jury returned a verdict that a constitutional rights  
23 violation was committed.

24 Detective Castillo did question Ms. Shaw about the bloody wrist picture in which  
25 she claims it would be from June 2013 as she has not had been suicidal nor had any  
26 suicidal thoughts since then but the record clearly shows he never asked Ms. Shaw about  
27 the text message included with the bloody wrist picture shown to Deputy Sharp to  
28 determine if that was from 2013.



1 Castillo then proceeded to testify at a grand jury hearing without ever questioning  
2 Ms. Shaw about the evidence Webb showed and the record clearly shows, per the  
3 recorded interview with Ms. Shaw after the grand jury hearing which was 10 days after  
4 Webb was arrested, gave the jury incorrect facts, with some of the incorrect facts told to  
5 the jurors multiple times, which was directly contradicted, correctly, by Ms. Shaw  
6 regarding Ms. Shaw and Plaintiffs past relationship.

7 Had the jurors been informed of the correct facts regarding Ms. Shaw and  
8 Plaintiffs past relationship, the jurors may have returned a no bill and Webb would not  
9 have been indicted on class 3 felony of stalking Ms. Shaw.

10 Sheriff Dupnik's policies, practices, and customs are flawed to the point of a  
11 detective actually testifying at a grand jury hearing with incorrect facts and without  
12 questioning a known mentally unstable persons claims even after the Warfe incident.

13 DCA Kendrick Wilson and/or DCA Chamblee had to approve of the investigation  
14 of Castillo and determined it was sufficient enough to proceed to seek an indictment  
15 against Webb even though Castillo did not have a recorded interview with Ms. Shaw and  
16 Ms. Shaw had not been questioned about the evidence presented by Webb contradicting  
17 Ms. Shaw's claims.

18 DCA Chamblee presided over the grand jury hearing and determined Castillo's  
19 testimony was sufficient to allow the jurors to vote on a felony indictment.

20 The record clearly shows that Chamblee did not inform the jurors at all of the  
21 elements required to prove stalking and the record clearly shows that a juror asked a  
22 question to Chamblee that would require a determination based on incorrect facts testified  
23 to by Castillo that were in direct contradiction to the facts in the recorded interview with  
24 Ms. Shaw after the hearing. Had Chamblee corrected Castillo's testimony and/or  
25 informed the jurors of the elements required to prove stalking, the law Webb was accused  
26 of violating, the jurors may have returned a no bill and Webb would not have been  
27 indicted on a class 3 felony of stalking Ms. Shaw.

28

1 Pima County Attorney Barbara LaWall's policies, practices, and customs allowed  
2 two DCAs to approve a detectives investigation and decide to proceed with criminal  
3 charges and subsequently attempt to prosecute Webb with LaWall's name attached to  
4 every document starting with the indictment.

5 The PCAO was defending Dupnik in the Larson case in which he was served on  
6 3/26/2014, one day after Webb's grand jury hearing, and Ms. Roseberry with the PCAO  
7 answered the complaint on 4/14/2014.

8 The PCAO was aware within days of Webb's indictment that the PCSD acted on  
9 information from a person already known to have made false claims and was recently  
10 hospitalized prior to the event to the point of the Larsons claiming their constitutional  
11 rights were violated.

12 DCA Wilson continued to pursue the criminal charge against Webb for over two  
13 months, with Castillo even continuing his investigation 49 days after he had told Ms.  
14 Shaw he was no longer involved with the case unless he was subpoenaed to testify, when  
15 the PCAO decided to dismiss the case for unknown reasons but it was after Webb made  
16 formal accusations of his constitutional rights being violated that also involved a person  
17 that was already known to the PCSD as well.

18 The Pima County government has a department called Finance and Risk  
19 Management that has ten divisions. Risk Management division has its own web page.  
20 (<http://webcms.pima.gov/cms/One.aspx?portalId=169&pageId=10116>)

21 The function of the Risk Management division is – "The Division of Risk  
22 Management works to identify areas of risk and potential liability and develop risk  
23 response strategies to mitigate loss and maximize opportunities. Our goal is to promote a  
24 culture of risk awareness by involving all County stakeholders in the day-to-day  
25 management of risks using a coordinated network of risk identification, careful  
26 evaluation and prudent resolution of actual and potential claims. An integral part of this  
27 goal is advancing the risk management process and embedding risk ownership into  
28 management activities at all levels of the County."

1           The description of services of the Risk Management division is – “The Risk  
2 Management Division provides advice on risk-related matters...and assists in the  
3 development of programs, policies and best practices to reduce the County's total cost of  
4 risk. We work with departments to identify various risks from people, assets, fiscal, and  
5 strategic operations; apply appropriate risk management strategies; and enhance  
6 awareness of risks.”

7           Some of the objectives using the risk management process:

- 8 1. Risk Identification: To facilitate a comprehensive and timely incident  
9 reporting network and claims tracking system.
- 10 2. Risk Analysis: To investigate and analyze information which is obtained from risk  
11 identification systems, including actual and potential risks for trends or patterns.
- 12 3. Loss Control: To administer all claims and protect the best interests of Pima County  
13 Government and its insureds in all aspects of claims management, trial preparation and  
14 settlement negotiations;
- 15 4. Loss Prevention:
- 16       a. To develop effective policies, guidelines and system revisions as needed to help  
17 reduce risk of employee injury and liability exposure;
- 18       b. To develop policies and procedures to ensure compliance with statutory and  
19 regulatory requirements;
- 20       c. To promote and provide ongoing education for all Pima County employees  
21 regarding the purpose and goals of the risk management program as well as effective  
22 strategies and techniques to reduce risk.

23           Pima County works hand in hand with all departments in their day-to-day  
24 operations including the PCAO and LaWall and the PCSD and Dupnik, Nanos, and  
25 Napier. Pima County assists in the development of programs, policies and best practices  
26 to reduce the County's total cost of risk. Pima County works with departments to identify  
27 various risks from people and strategic operations. Pima County investigates and  
28 analyzes information which is obtained from risk identification systems, including actual

1 and potential risks for trends or patterns. Pima County administers all claims and  
2 protects the best interests of the Pima County Government and its insureds in all aspects  
3 of claims management, trial preparation and settlement negotiations among the many  
4 others listed.

5 Pima County's policies, procedures, and customs promulgates a culture when  
6 handling liability claims of strictly avoidance of liability if it is in Pima County's best  
7 financial interests even if trends and patterns do exist concerning constitutional rights  
8 issues regarding the PCSD and PCAO at the cost of any citizens constitutional rights as  
9 Plaintiff's case, the Larson's case, and the Jackson's case illustrate in the smallest of  
10 sample sizes.

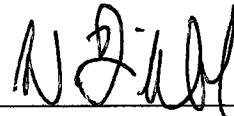
11 Although some facts may be more conclusory it is not the case with the vast  
12 majority of facts presented in Plaintiff's amended complaint. The allegations are clearly  
13 set forth throughout the complaint and Plaintiff does not agree that the claims are not  
14 legitimate or are generally couched in the terms of 14<sup>th</sup> Amendment.

15 Plaintiff has suffered tremendously as a result of the financial and emotional toll  
16 of the criminal case brought him. He had to start his life over again which he already did  
17 5 years previously so he lost 5 years of his life that he cannot ever recover. Plaintiff has  
18 been in counseling since July of 2014 to the present day solely due to the criminal  
19 brought against him and its repercussions on his life. He was not in counseling before  
20 meeting with meeting with Sharp. A well-qualified counselor, on paper, has stated that  
21 Plaintiff was showing signs of post-traumatic stress trauma when he returned to  
22 Kentucky. Other counselors have also assisted him in managing what they believe is also  
23 signs of post-traumatic stress disorder and depression. Plaintiff has been homeless and  
24 slept in his car numerous times while struggling through the trying times. Plaintiff has  
25 never felt the need to sleep in his car before 3/15/14. His family called the police on him  
26 on two separate occasions because they were worried about how he handling his  
27 situation. His family attempted to have Plaintiff hospitalized but the hospital would not  
28 accept him as there was nothing they could to do to help alieve him of the situation he

1 was in. Plaintiff has struggled with employment and finances among many others which  
2 Webb has proof of.

3 It is not Webb's job to police the government. It is the government's job to ensure  
4 it is protecting the constitutional rights of all citizens so there is no need to file civil  
5 lawsuits against the government in the first place.

6  
7 RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of August 2018.

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