

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Office of the Principal Legal Advisor - District Court Litigation Division 500 12th St SW, Mail Stop 5900 Washington, D.C. 20536			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse). Number, Street, City, State and Zip code. Gail Kocourek Paul Gattone, Esq. 301 S Convent Ave Tucson, AZ 85701		
3. TYPE OF EMPLOYMENT ☐ MILITARY ☒ CIVILIAN	4. DATE OF BIRTH 	5. MARITAL STATUS Single	6. DATE AND DAY OF ACCIDENT 03/12/2025	7. TIME (A.M. OR P.M.) 2:30pm	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). See Addendum.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State, and Zip Code). None.					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). None.					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. See addendum.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
Evan Spry Ann Niederkorn					
12. (See instructions on reverse). AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY 543,750.00	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights). 543,750.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side). 			13b. PHONE NUMBER OF PERSON SIGNING FORM 	14. DATE OF SIGNATURE 07/08/2025	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident Insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

Not applicable.

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No 17. If deductible, state amount.

Not applicable.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

Not applicable.

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

Not applicable.

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filled by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.
C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is **solely** for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.



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GattoneCivilRightsLaw@gmail.com

Gail Kocourek v. USA
Federal Tort Claims Act
Addendum to Standard Form 95

The below narratives are intended to supplement the SF-95 submitted in conjunction herewith.

Section 8: Basis of Claim

Claimant is a volunteer with Tucson Samaritans, a grassroots humanitarian aid organization dedicated to providing water, food, first aid, and other essential items to migrants making the arduous journey through the difficult Southern Arizona terrain. Founded in 2002, volunteers of Tucson Samaritans conduct up to 14 volunteer trips per week to the desolate regions primarily west of Nogales, Arizona and east of the Baboquivari Mountain range. A recent news report in Tucson's Channel 13 News describes the work of Samaritans volunteers and, quoting Claimant, describes the risks associated with their work:

The Samaritans give anyone they encounter humanitarian aid, regardless of who they are and how they got to the border. Once they provide help, the volunteers wait for Border Patrol agents to pick the migrants up . . .

While giving humanitarian aid to anyone is legal, [Claimant] and other members of the Tucson Samaritans frequently receive threats and get stalked and harassed by people who don't agree with their work.¹

During her regular volunteer trips to the borderlands, Claimant drives a four-wheel-drive vehicle clearly marked with the "Samaritans" logo and makes stops in areas known to have a heavy presence of migrant foot traffic. The image below shows Claimant, in 2019, affixing the signage to the vehicle on a routine day. The signage features a white cross on a red background, similar to the emblem used throughout the world by humanitarian organizations such as the International Red Cross.



In the areas of the desert routinely served by Samaritans volunteers, Border Patrol agents widely recognize the Samaritans vehicles. For over 20 years, Border Patrol

¹ Torres, Raya. TUCSON SAMARITANS GIVE AIDE TO MIGRANTS AT THE BORDER, WHICH IS LEGAL, January 15, 2025, available at: www.kold.com/2025/01/17/tucson-samaritans-give-aide-migrants-border-which-is-legal/
Addendum to FTCA Claim
Claimant Gail Kocourek
July 11, 2025

personnel in Southern Arizona have grown accustomed to seeing the familiar white cross affixed to the driver and passenger doors. Among the hundreds of Samaritans volunteers who have devoted their free time to this mission, perhaps no one's presence is more ubiquitous than Claimant's. Claimant can be expected to make the trek from Tucson to the region east of Sasabe three times per week. Her presence in these unforgiving lands has led to a friendly, respectful rapport with Border Patrol agents. It is not uncommon for a Border Patrol agent, upon learning that he will soon be transferred or promoted, to share their news with Claimant as one would to a coworker.

On March 12, 2025, Claimant and other Samaritans volunteers departed Tucson and headed for the small border hamlet of Sasabe, Arizona. All volunteers were unarmed. With their unmistakable "Samaritans" signage, Claimant and her colleagues headed eastbound from Sasabe, eventually traveling along a public-access road running parallel to the border fence. The access road is widely considered to be available to the public. For example, the "Rancho de la Osa" dude ranch runs guided off-road tours along portions of the access road, local ranchers sometimes wrangle cattle along the access road, and private ranch owners rely on the access road to travel between Sasabe and their remote parcels. During her many years of experience, Claimant had never been told that she was trespassing on the road.

The access road is maintained by joint efforts of the U.S. Forest Service and Border Patrol. The authority to construct the access road stems from a 120-year-old presidential proclamation, known as the "Roosevelt Reservation", setting aside a 60-foot-

wide strip of land for federal use along the entirety of the Arizona-Mexico border. More recently, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 and the REAL ID Act of 2005 gave additional authorization to the federal government to build and maintain service roads along the strip of land set aside by the Roosevelt Reservation. By virtue of this, federal law designates the access road as a “public road . . . open to public travel.” 23 U.S.C. § 101(a)(22). The image below shows how the access road is immediately adjacent to the wall itself.



Moreover, the portion of the access road traveled by Claimant on March 12th mostly traverses public land. For example, the road passes through the Buenos Aires National Wildlife Refuge (administered by the U.S. Fish and Wildlife Service) and the Coronado National Forest (administered by the U.S. Department of Agriculture). In one section, the road traverses private property known as the Tres Bellotas Ranch. Lori Lindsay is the ranch owner and has given Claimant permission to access her private property during humanitarian aid trips. Claimant and her colleagues intended to stop along the Lindsay property to check on a water station maintained by another local



humanitarian aid organization. Days earlier, Claimant received information that the water station had been vandalized by so-called border vigilantes (also commonly referred to as “minutemen” or “militiamen”) and Claimant wanted to check on the status of the water station. Vigilantes have become a common presence and are sometimes confrontational with humanitarian aid volunteers such as Claimant. Upon approaching the water station, Claimant and her colleagues encountered an unmarked

SUV parked to one side of the access road, accompanied by three plain-clothed men standing next to the parked vehicle. One of the men held an assault-style rifle. None wore a uniform. In their dress and demeanor, the three men resembled vigilantes. The image above depicts what Claimant and her colleagues observed in this moment. Rather than engage with these men, Claimant and her colleagues simply continued eastbound along



the access road. Later on, they turned around and began heading westbound toward Sasabe along the same route. Upon turning around, Claimant observed the same SUV approaching them from the west. In the distance, the SUV was seen positioning itself perpendicular to the border fence in an apparent attempt to block the road. There were no other vehicles within sight. Claimant and her passengers were clearly the object of the SUV's bizarre behavior.

As Claimant and her colleagues approached, the SUV occupants exited their vehicle and drew their weapons. Claimant could see the guns aimed directly at her.

Believing her life to be in danger, Claimant steered around the armed men and continued driving westbound along the access road.

The SUV began pursuing them. There were no emergency lights, sirens, or anything to indicate the pursuing SUV was law enforcement. The pursuit continued for several minutes at a high rate of speed along the dirt road until Claimant spotted a marked Border Patrol vehicle perched on the side of the road. Claimant stopped and the passengers hastily told the agent that armed men were in pursuit. The Border Patrol agent quickly spoke into his radio and was informed that the armed men were federal agents. The armed men pulled their SUV directly behind Claimant's parked vehicle, pointed their weapons for a second time, and ordered the Samaritans volunteers to display their hands. They complied.

The plain-clothes men who were now understood to be federal agents immediately handcuffed Claimant and one of the backseat passengers. The federal agents did not have an arrest warrant. Claimant and her backseat passenger remained handcuffed for an unknown number of minutes while agents reviewed their passports and other identity documents. Upon seeing the plain-clothed men up close, Claimant could see that there were four men, and one had a law enforcement badge affixed to his shirt. In the two earlier encounters, the agent's badge had been obscured. None of the four men identified the federal agency with whom they were associated, yet the uniformed Border Patrol agent confirmed that the men were not with his agency. The armed men released Claimant and her colleagues.

It was later confirmed that the armed men were agents employed by Homeland Security Investigations, commonly known as “HSI.” HSI is a branch of ICE (Immigration and Customs Enforcement). Upon information and belief, none of the HSI agents were “peace officers” under Arizona state law, as they met none of the criteria set forth in A.R.S. § 1-215(28) and were not certified by the Arizona Peace Officer Standards and Training Board (“POST”). As a result, the HSI agents generally lacked authority to effectuate arrests and detentions based on perceived violations of state law. A.R.S. § 41-1823 (“no person may exercise the authority or perform the duties of a peace officer unless he is certified by the board”). For example, federal agents generally have “no jurisdiction to enforce Arizona state traffic laws,” *State v. Grijalva*, 2015 WL 686025, at *2 (Ariz. Ct. App. Feb. 17, 2015).

The only circumstances under which they could have lawfully arrested or detained Claimant under state law is under Arizona’s so-called “citizen arrest” statute. *State v. Garcia-Navarro*, 224 Ariz. 38, 41 (Ct. App. 2010). Put differently, a federal agent who lacks independent certification as a state “peace officer” can arrest someone for a suspected violation of state law only to the same extent as a private security guard. Naturally, that authority is quite limited. The citizen arrest statute allows a federal agent to make an arrest only for a state-law felony or a state-law “misdemeanor amounting to a breach of the peace” that was committed in the federal agent’s presence. A.R.S. § 13-3884. In short, the vast majority of state-law misdemeanors lay out of reach for a federal

agent. *See, e.g., Gortarez v. Smitty's Super Valu, Inc.*, 140 Ariz. 97, 102 (1984). Neither Claimant nor her passengers had committed a state-law felony or a misdemeanor.

Of course, as federal agents, HSI agents had authority to make arrests for federal offenses. 8 U.S.C. § 1357 (permitting federal ICE agents to make warrantless arrests under limited circumstances such as where a suspect “is entering or attempting to enter the United States in violation of any law” and “for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens”). The HSI agents did not have reason to believe any of these things were occurring. Despite this, they determined it necessary to block the road in the most threatening manner imaginable.

Finally, the events giving rise to this claim took place before April 11, 2025, when President Trump issued a Presidential Memorandum entitled “Military Mission for Sealing the Southern Border of the United States and Repelling Invasions”, purporting to temporarily transfer lands to the military and confer military jurisdiction over non-tribal portions of the 60-foot Roosevelt Reservation easement. By doing so, the federal government purports to create a new “national defense area” out of the stretch of land adjacent to the border wall, thereby allowing military commanders to promulgate regulations criminalizing otherwise lawful activities conducted by private individuals. *See, e.g., United States v. Lucas-Curiel*, 2025 WL 1412643 (D.N.M. May 14, 2025) (Wormuth, G., Judge) (describing the presidential memorandum as attempting to create new crimes such as the pre-existing crime of “go[ing] upon any military, naval, or Coast

Guard reservation . . . or installation, for any purpose prohibited by law”, 18 U.S.C. § 1382, which previously applied only to the more traditionally-understood military spaces). Because this Presidential Memorandum was issued a month after the events here, there can be no argument that the agents’ actions were somehow justified on account of a suspected violation of a military-type trespassing offense.

Section 10: Nature and Extent of Each Injury

Pursuant to 28 U.S.C. § 2674, the United States is liable to the same extent as a private individual under Arizona tort law. The below are the state-law tort claims for which the United States is liable to Claimant:

- Intentional Infliction of Emotional Distress (IIED): Arizona recognizes an independent tort of IIED, applying the elements articulated in Section 46 of the Restatement (Second) of Torts. *See, e.g., Ford v. Revlon, Inc.*, 153 Ariz. 38, 43 (1987); *see also Craig v. M & O Agencies, Inc.*, 496 F.3d 1047, 1059 (9th Cir. 2007) (interpreting Arizona law on IIED and citing the Restatement comments). Undoubtedly, the agents acted outrageously by pointing their firearms at Claimant when they had no legal privilege to do so and had no probable cause to believe that Claimant or her vehicle passengers had committed a criminal offense.
- Assault: The federal agents committed assault by “intend[ing] to cause . . . apprehension of an immediate harmful or offensive contact” when they displayed and pointed their firearms. *Davis v. Buckley*, 2013 WL 12114582, at *8 (D. Ariz. Oct. 17, 2013). When an officer tortiously assaults someone, it is analogous to

unconstitutional excessive force under the Fourth Amendment. *Larson Dupnik*, 2015 WL 5287040, at *9 (D. Ariz. Sept. 9, 2015) (finding a common law assault where “there was no basis for [officers] to continue pointing guns at the Plaintiffs.”); *Robinson v. Solano County*, 278 F.3d 1007, 1014–15 (9th Cir.2002) (holding that the officers’ use of a drawn gun amounted to excessive force).

Within the Ninth Circuit, this principle has been clearly established law for almost forty years. *See, e.g., McKenzie v. Lamb*, 738 F.2d 1005, 1010 (9th Cir. 1984); *Robinson v. Solano Cnty.*, 278 F.3d 1007, 1014 (9th Cir. 2002); *Foster v. City of Indio*, 908 F.3d 1204, 1218 (9th Cir. 2018).

- False Arrest/False Imprisonment: Under state law, false imprisonment occurs when “(1) the defendant acted with intent to confine another person within boundaries fixed by the defendant; (2) the defendant's act resulted in such confinement, either directly or indirectly; and (3) the other person was conscious of the confinement or was harmed by it.” *Hart v. Seven Resorts Inc.*, 190 Ariz. 272, 281, 947 P.2d 846, 855 (App.1997). “The essence of false imprisonment is the direct restraint of personal liberty or freedom of locomotion, either by actual force or the fear of force.” *Deadman v. Valley Nat'l Bank of Ariz.*, 154 Ariz. 452, 457, 743 P.2d 961, 966 (App.1987). As explained above, federal agents are permitted to detain a suspect in very limited circumstances. In fact, a federal agent’s so-called “privilege” to detain a person is more limited in scope than his or her local law enforcement counterpart. This is because a federal agent’s primary

duty is to investigate federal crimes, and the vast majority of criminal offenses are creatures of state law. Again, a federal agent is empowered to arrest for state offenses only to the extent permitted by Arizona's citizen arrest statute.

Section 12: Amount of Claim

As noted on the SF-95, Line 12, Claimant seeks \$543,750.00, inclusive of attorneys' fees and costs. This is a reasonable amount, in light of Claimant's emotional pain and suffering. This amount is also reasonable in light of comparable settlement amounts by other law enforcement agencies within the Ninth Circuit where law enforcement officers pointed their firearms at civilians without provocation or justification.

- Ames, et al. v. City of Phoenix (2020): In 2020, the City of Phoenix agreed to pay \$475,000 during pre-litigation settlement discussions, after one of its officers approached a family with his gun drawn, as they peacefully sat in their parked car. See: <https://www.nytimes.com/2020/08/29/us/phoenix-police-settlement.html>
- Hopkins v. Bonvicino, et al., 3:05-cv-02932 (N.D. Cal. 2011): The city of San Carlos, California settled a lawsuit for \$150,000 after its officers illegally entered a man's home with guns drawn. The man woke up in his bedroom to discover that officers had entered his home with guns drawn.
- Taylor, et al. v. Calaveras County, et al., 1:18-cv-00760 (E.D. Cal. 2021): A sheriff's department in rural California settled a lawsuit for \$300,000 after its

deputies entered a family's backyard without a warrant, pointing their guns and briefly detaining the husband.

- Larson v. Dupnik, et al., 4:14-cv-01592 (D. Ariz. 2016): A Pima County jury awarded a couple \$1.25 million in damages in 2016 after sheriff's deputies responded to their home with guns drawn, erroneously believing that they were responsible for discharging weapons on the property earlier that night.