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

Penny Lynn McCarthy,

No. _____

Plaintiff,

COMPLAINT

v.

United States of America; Six
Unknown Named Agents of the
United States Marshals Service;
Two Unknown Named Agents of
the United States Marshals
Service; John Does,

Defendants.

INTRODUCTION

1. This is a civil-rights lawsuit arising from the erroneous arrest and continued detention of an innocent grandmother by agents of the United States Marshals Service, who had no warrant to search or arrest her.

2. One afternoon last March, 2024, then-66-year-old Penny McCarthy was minding her own business, doing yard work in front of her house in Phoenix, Arizona. She had never been arrested before, had never been charged with a crime other than a traffic infraction, had done nothing suspicious, and was clearly nonthreatening—wearing shorts, a sleeveless shirt, and slippers, and carrying nothing (much less anything dangerous).

3. Suddenly and without warning, three unmarked vehicles carrying six agents of the United States Marshals Service pulled up to Penny's driveway. Officers shouted at her, aimed firearms at her, and ordered her to put her hands up, which she did. They claimed they had an arrest warrant for her. But they did not have such a warrant. They had a 25-year-old warrant issued by a court in Oklahoma to arrest Carole Anne Rozak for failing to check in with a probation officer after her release from prison in Texas for non-violent crimes. Penny had no connection to Rozak.

4. Penny was rightly in disbelief when the officers said they had a warrant for her. She thought she was becoming the victim of a kidnapping. She asked the officers who they thought she was and asked if they would confirm her

1 identity. They responded by shouting threats to “hit” her if she kept looking at
2 them.

3 5. They then manacled her in her driveway, patted her down, put her in a
4 police vehicle, and drove to the United States Marshals Office in Phoenix. In
5 response to Penny’s question, “Do you know who I am?” Officers responded
6 first, “Carole Rozak” and then “Penny McCarthy.” Penny said she has never
7 been Carole Rozak and can prove who she is. But the officers did not give her
8 a chance.

9 6. At the U.S. Marshals Office, Penny continued to insist that she was not
10 Carole Rozak, but it did no good. Officers took her fingerprints twice, along
11 with a DNA sample and photos of her face and tattoo. Officers strip searched
12 her, re-shackled her, and loaded her onto a bus to a federal detention facility
13 in Florence, Arizona. Penny was then booked, strip searched again, locked in
14 a cold cell overnight, strip searched a third time, and then bussed back to
15 Phoenix for the initial appearance of Carole Rozak. At that hearing, a judge let
16 Penny go pending an identity hearing set for the following month. Eventually,
17 the government confirmed that Penny’s fingerprints and DNA do not match
18 Rozak’s and ended the proceedings against Penny.

19 7. The experience was traumatic for Penny. She was never informed of her
20 rights or allowed to call family, an attorney, or her boss to explain that she was
21

(literally) tied up. She was not allowed to show her driver's license or other identification, to make arrangements to care for her dog, or to secure her home.

8. The officers who contributed to Penny's arrest and continued detention failed to run basic checks on her identity and disregarded plain evidence that Penny was not Carole Rozak. They lacked probable cause to believe she was Rozak or had otherwise committed a crime.

9. Penny brings this suit seeking accountability for the injustices she suffered, and this complaint lays out several pathways for relief. Penny asserts *Bivens* counts against the officers responsible for her seizure and prolonged detention (Counts 7 and 8). She asserts a count against the United States under the Federal Tort Claims Act, based on state-law torts the government's agents committed (Count 9). She also asserts state-law counts against the individual officers (Counts 1–6) under two alternative theories: either those state-law counts are available to her under 28 U.S.C. § 2679(b)(2)(A) of the Westfall Act; or, if the Westfall Act is held to preclude those claims and no remedy is available to Penny, the Westfall Act is unconstitutional as applied to her, and whatever barrier the Act poses to her state-law counts is invalid and ineffective (Count 10).

10. At base, a central promise of our justice system is that people like Penny McCarthy are entitled to be made whole when government agents fecklessly

1 strip them of their liberty, security, clothing, and dignity. Whatever path the
2 Court ultimately selects, Penny is entitled to judgment in her favor.

3 JURISDICTION & VENUE

4 11. Plaintiff Penny McCarthy brings this case under the Fourth and Fifth
5 Amendments to the Constitution of the United States; the Federal Tort Claims
6 Act, including the Westfall Act of 1988, 28 U.S.C. §§ 1346, 2674 *et seq.*; and
7 Arizona common-law torts.

8 12. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1346(b), and 1367,
9 because Penny asserts claims under federal laws and her state-law claims
10 arise from the same underlying events.

11 13. On November 26, 2024, Penny submitted, under the Federal Tort Claims
12 Act, an administrative claim to the United States Marshals Service, using
13 Standard Form 95.

14 14. The Marshals Service did not respond to the claim within six months, so
15 the claim was deemed denied on May 26, 2025. *See* 28 U.S.C. § 2675(a).

16 15. Venue is proper in this Court under 28 U.S.C. §§ 1391(b)(2) and 1402(b),
17 because the events giving rise to this action occurred in this district.

18 PARTIES

19 16. Plaintiff Penny Lynn McCarthy is a United States citizen.

20 17. When the events underlying this lawsuit occurred, Penny resided in
21 Phoenix, Arizona.

1 18. Defendant United States of America is the government of the United
2 States.

3 19. Defendants Six Unknown Named Agents of the United States Marshals
4 Service are, or at least were at the time of the events underlying this action,
5 employees of the United States Marshals Service, who initially detained and
6 arrested Penny at her home in Phoenix. They are sued both in their individual
7 capacities and as employees of the United States government acting within the
8 scope of their offices or employment.

9 20. Defendants Two Unknown Named Agents of the United States Marshals
10 Service are, or at least were at the time of the events underlying this action,
11 employees of the United States Marshals Service in Phoenix, Arizona. One
12 falsely claimed—at the United States Marshals Office in Phoenix where Penny
13 was detained for some time—that Penny’s fingerprints matched those of Carole
14 Rozak and that he had gotten a “hit” on Penny’s tattoo. The other agent is a
15 female who identified herself as a supervisor, who spoke with Penny’s sister
16 on the phone, and who strip searched Penny at the United States Marshals
17 Office in Phoenix. The two agents are sued in their individual capacities and
18 as employees of the United States government acting within the scope of their
19 offices or employment.

20 21. Defendants John Does are employees or agents of the United States
21 Marshals Service or another agency of the United States who misidentified
22

1 Penny as Carole Rozak, using Facebook or other means, and whose acts or
2 omissions contributed to Penny's initial detention at gunpoint, arrest, and
3 continued detention. They are sued in their individual capacities and as
4 employees of the United States government acting within the scope of their
5 offices or employment.

6 FACTUAL ALLEGATIONS

7 ***A. Officers assume Penny is someone else and violently arrest her.***

8 22. Penny is a 67-year-old grandmother.

9 23. She was 66 at the time of the underlying events.

10 24. She has always striven to be law-abiding and to stay out of trouble, and
11 she has been successful.

12 25. Before the events underlying this action, she had never been arrested.

13 26. She has never been charged with a crime other than a traffic infraction.

14 And she has not been charged with a traffic infraction since 2012.

15 27. She has no history of violence.

16 28. On March 5, 2024, Penny was minding her own business at her house in
17 Phoenix, Arizona.

18 29. She had moved to Phoenix less than a year before.

19 30. She had moved from Colorado following the death of her husband.

20 31. Before moving to Phoenix, Penny's residence was in Colorado and had
21 been since 1974.

1 32. When living in Colorado, Penny traveled outside of the state only to visit
2 family and go on family trips.

3 33. Penny was never arrested, charged with a crime, or otherwise the target
4 of any law-enforcement activity on any of those visits or trips.

5 34. Before living in Colorado, Penny lived in California, where she was born
6 and grew up.

7 35. In the afternoon on March 5, 2024, Penny finished work at 1:00 and
8 began doing yard work at home shortly thereafter.

9 36. She was on her driveway wearing shorts, a sleeveless shirt, and slippers.

10 37. Her hands were empty, having just set down a block of wood she had
11 moved.

12 38. She clearly posed no threat to anyone.

13 39. Three unmarked vehicles suddenly pulled up to her driveway.

14 40. They blocked Penny in her driveway.

15 41. Inside those vehicles were Defendants Six Unknown Named Agents of
16 the United States Marshals Service.

17 42. They planned to execute a warrant for the arrest of Carole Anne Rozak.

18 43. The officers did not have a warrant to arrest Penny McCarthy.

19 44. The officers saw Penny on her driveway.

20 45. They erroneously and unreasonably assumed Penny was Carole Rozak.

1 46. They consciously and deliberately disregarded any information they had
2 indicating that Penny was not Carole Rozak and that Penny was
3 nonthreatening.

4 47. They aimed firearms at her from their vehicles and shouted at her:
5 “Police. Don’t move. Hands up.”

6 48. Penny immediately complied, putting her hands up.

7 49. An officer ordered her: “Turn around. Turn away from the sound of my
8 voice.”

9 50. Penny’s dog started barking frantically inside her house.

10 51. As Penny was turning her body away from the officer, the same officer
11 continued, “We have an arrest warrant. Turn away from the sound of my
12 voice.”

13 52. Hearing this, Penny was in disbelief.

14 53. Penny had no idea what the basis for such a warrant could be or why the
15 officers were aiming weapons at her and yelling at her, even if they had a
16 warrant.

17 54. She knew there must have been a mistake in targeting her. Either that,
18 she thought, or the individuals had fabricated their story about the warrant.

19 55. Keeping her body turned away from the officer, Penny tried to look
20 toward him with her head and asked, “For me?”

21 56. He shouted back, “Yes. For you.”

1 57. Penny asked, "Who am I?"

2 58. No officer answered that question, raising Penny's suspicion that the
3 people shouting at her and aiming weapons at her were not really law-
4 enforcement officers or did not really have a warrant to arrest her.

5 59. One officer shouted, "Turn away. Turn away or you're gonna get hit,"
6 presumably with a taser, bullet, or other painful weapon.

7 60. Penny was already turned away from the officer.

8 61. Only her head was turned slightly toward some of the officers.

9 62. Another officer shouted, "Turn around. We'll discuss it later."

10 63. This whole time, Penny kept her body turned away from the officers and
11 kept her hands up.

12 64. Penny asked them calmly, "Don't you want to confirm who I am?"

13 65. In response, an officer yelled at her to put her hands behind her back
14 and said, "We'll discuss this later."

15 66. The officers did not want to confirm who Penny was.

16 67. They were concerned only with apprehending Penny.

17 68. Penny immediately complied with the officer's order to put her hands
18 behind her back.

19 69. The same officer then ordered: "Turn around and face away from me."

20 70. Because her body was already turned away from the officer, Penny didn't
21 know how to comply with that order.

22

1 71. She took a small, quick, shuffling step forward, away from the officer,
2 with her hands behind her back, and stood still.

3 72. The officer ordered, "Stop moving and stop looking back."

4 73. He again yelled, "Stop looking back."

5 74. Penny pleaded, "Can you prove you're the police?"

6 75. The officer said, "Ma'am. You see that we're the police."

7 76. Penny asked, "How do I see that?"

8 77. Indeed, the officers were all wearing plain-clothes: t-shirts and jeans or
9 shorts.

10 78. On top of their plain clothes the officers wore tactical vests.

11 79. They had not shown Penny any badges.

12 80. Their vehicles were unmarked.

13 81. And because she was complying with their orders, Penny was turned
14 away from the officers.

15 82. She could get only partial views of them when she turned her head
16 slightly toward them.

17 83. They had given Penny no indication of any crime she was suspected of
18 having committed.

19 84. The officer threatened, "Ma'am. You're gonna get -- If you don't -- If you
20 turn around again you're gonna get tased. You understand me?"

21

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1 85. After turning her body away from the officers when they first ordered
2 her to turn away from them, Penny had not turned her body back to face them.
3 She only glanced toward them with her head when trying to see who they were
4 and speak with them.

5 86. Another officer, who was also aiming a large firearm at Penny from
6 behind one of the vehicles, asked the officer who had been doing most of the
7 speaking, "You want me to come up?" to which the other officer replied in the
8 affirmative.

9 87. All six officers then approached Penny on her driveway, on foot.

10 88. They manacled Penny's hands behind her back.

11 89. Penny asked the officers, "If you're going to take me somewhere, can I,
12 like -- "

13 90. Then she told officers who were walking up her driveway toward her
14 house, "There's no one in there but the dog."

15 91. Penny's dog continued barking frantically.

16 92. Penny continued her question, " -- If you're going to take me somewhere,
17 can I fix my dog?"

18 93. An officer said no.

19 94. Holding Penny's right arm, officers walked Penny down her driveway to
20 one of the unmarked vehicles, which was a white van or SUV.

21

22

1 95. As the officers walked Penny down her driveway toward the vehicle,
2 officers could see most of her tattoo on the back of her right shoulder.

3 96. Penny's tattoo is unique.

4 97. She designed it herself, and it was applied at the tattoo shop of Penny's
5 cousin in Colorado Springs.

6 98. The tattoo says "Jesus," in cursive, above a picture of a halo, which is
7 above a picture of a heart with wings.

8 99. Inside the heart is inscribed, "Johnny," in cursive.

9 100. Johnny is the name of Penny's late husband.

10 101. Below the heart is written, "Family," in cursive.

11 102. As the officers turned Penny back around to face them, Penny asked,
12 "Hey, do you know who I am?"

13 103. An officer said, "Yes," and, "You're going to step around," meaning Penny
14 was going to step to another part of the vehicle. "We're going to search you."

15 104. Penny asked, "Who am I?"

16 105. An officer responded, "Carole Rozak."

17 106. Penny said, "That's not who I am."

18 107. An officer said, "Penny McCarthy."

19 108. Penny said, "Yes. But I've never been Carole Rozak. I can prove who I
20 am."

21

22

1 109. An officer said, "Okay," but did not give Penny a chance to prove who she
2 was.

3 110. An officer then patted Penny down.

4 111. The officer found nothing on Penny in the search.

5 112. The officers then placed Penny inside the unmarked white van or SUV.

6 113. Penny asked, "You promise you're going to let me take care of my dog?"

7 114. Penny said, "I haven't done anything."

8 115. As officers closed the door to the van or SUV, Penny asked, "What about
9 my dog? Please let me lock my door and take my keys."

10 116. The officers ignored her pleas.

11 117. Penny asked them, "Hello?"

12 118. Still they ignored her requests.

13 119. The whole time, Penny was calm and compliant.

14 120. At no time did Penny give the officers any reason to believe that she was
15 armed or dangerous.

16 121. Penny gave the officers no reason to believe that she was anyone other
17 than Penny McCarthy.

18 122. Still, officers shackled her ankles and drove away from her home.

19 123. They did not allow Penny to tend to her barking dog.

20 124. They did not allow her to retrieve her purse, phone, or keys.

21 125. They did not allow her to retrieve any other belongings.

1 126. They did not allow her to retrieve or show them her driver's license, birth
2 certificate, social security card, or other government-issued identification.

3 127. Penny kept old driver's licenses and other identifying documents easily
4 accessible in her house. She could have shown the officers government-issued
5 identification dating back decades.

6 128. Penny also had family photos dating back decades, which also would
7 have proven that Penny was not Rozak and had never looked like Rozak.

8 129. The officers did not allow Penny to lock the doors of her house.

9 130. They did not allow her to call anyone.

10 131. When the officers took Penny away from her house, no one in Penny's
11 life knew where she was.

12 132. She could not contact family, friends, or an attorney.

13 133. The officers did not inform her of any rights she had.

14 134. The officers who initially detained and arrested Penny (Defendants Six
15 Unknown Named Agents of the United States Marshals Service) were rank-
16 and-file federal law-enforcement officers.

17 135. Phoenix, Arizona, where the officers arrested Penny, is not a border
18 town.

19 136. Nor were the officers enforcing immigration laws, carrying out border-
20 patrol activities, or addressing a risk to national security.

1 137. Rather, they were attempting to execute a warrant issued in Oklahoma,
2 for a domestic probation violation.

3 138. For these six officers, their task was commonplace: arrest a fugitive who
4 had been convicted of domestic crimes within the United States.

5 139. But the officers consciously and deliberately disregarded all indications
6 that Penny was not Rozak. Instead, they aimed to violently arrest Penny,
7 regardless of whether she was innocent or the subject of the warrant, and to
8 subject her to criminal proceedings. In so doing, the officers demonstrated
9 reckless or callous indifference to Penny's rights.

10 ***B. Penny is taken to a U.S. Marshals Office, photographed,***
11 ***fingerprinted, and strip searched.***

12 140. Penny was in the white police vehicle with at least three of the U.S.
13 Marshals who had arrested her in her driveway.

14 141. She asked them why they had arrested her.

15 142. An officer told her that she was wanted on a warrant out of Oklahoma
16 for a probation violation.

17 143. Penny said that to commit a probation violation, she would have to have
18 been arrested or convicted of a crime on which probation could be based, and
19 she's never been arrested or convicted of such a crime.

20 144. Penny repeatedly insisted that she could not be the person they thought
21 she was.

1 145. The officers did not listen to her.

2 146. Instead, they increased her fear that she had been kidnapped.

3 147. They drove her to a parking lot and proceeded to a loading area behind

4 Fry's Food and Drug store at 35th Avenue and West Peoria Avenue in Phoenix.

5 148. Penny remained handcuffed and leg-shackled.

6 149. Penny said she didn't know a police facility was located there.

7 150. Indeed, no police facility was located behind Fry's.

8 151. The officers told her they were only switching vehicles there.

9 152. Some of the officers changed vehicles, but Penny stayed in the same

10 vehicle.

11 153. While in the vehicle, Penny saw what she later learned was the warrant

12 for Rozak's arrest, along with an 8.5" x 11" paper filled nearly to the margins

13 with Penny's Facebook profile picture.

14 154. The officers transported Penny to the United States Marshals Office at

15 or near the Sandra Day O'Connor United States Courthouse in downtown

16 Phoenix.

17 155. At the U.S. Marshals Office, one or more officers took two sets of Penny's

18 fingerprints: one electronically and one with ink.

19 156. One or more officers took a mug shot of Penny.

20 157. One or more officers took a DNA sample from Penny.

21 158. Penny asked to make a phone call.

22

1 159. Officers did not allow her to make any phone calls.

2 160. One officer, a female who described herself as a supervisor, took the
3 names and birthdates of Penny's five children as Penny told her that
4 information.

5 161. That officer also took the phone number of Penny's sister when Penny
6 gave her that information.

7 162. The officer called Penny's sister, who explained that there must have
8 been a mistake in arresting Penny, because Penny had never been in trouble
9 with the law and would not do anything that would get her arrested.

10 163. The information Penny gave about her family, and the officer's phone
11 call to Penny's sister, did no good to correct the officers' misidentification of
12 Penny.

13 164. The officer who had called Penny's sister consciously and deliberately
14 disregarded the information about Penny's children and the information from
15 the phone call to Penny's sister—which indicated that Penny was not Carole
16 Rozak.

17 165. Penny was not allowed to make a phone call herself.

18 166. Penny was given no other opportunities to prove her identity.

19 167. Another officer, a man sitting at a desk in the same room where Penny's
20 fingerprints were taken, said that Penny's fingerprints matched those of
21 Carole Rozak.

1 168. That statement was false.

2 169. No reasonable officer comparing Penny's fingerprints to those of Carole
3 Rozak could honestly claim that they match.

4 170. On information and belief, the officer who claimed that Penny's
5 fingerprints matched those of Carole Rozak was not qualified to compare
6 fingerprints.

7 171. The officer who claimed Penny's fingerprints matched those of Carole
8 Rozak either lied or made that claim with reckless disregard for the truth.

9 172. Fingerprint comparisons—especially those performed quickly—are not
10 always reliable.

11 173. Fingerprint comparisons—especially those performed quickly—are often
12 not reliable.

13 174. The officer who claimed that Penny's fingerprints matched those of
14 Rozak, and the officer who called Penny's sister, knew that fingerprint
15 comparisons—especially those performed quickly—are not always reliable.

16 175. The officer who claimed that Penny's fingerprints matched those of
17 Rozak, and the officer who called Penny's sister, knew that fingerprint
18 comparisons—especially those performed quickly—have a large margin of
19 error.

20 176. The officer who claimed Penny's fingerprints matched those of Rozak
21 also said that he got a "hit" on Penny's tattoo.

1 177. That statement was false to the extent it indicated that Penny was
2 Carole Rozak or was otherwise linked to a convicted criminal or a criminal
3 suspect.

4 178. Penny's tattoo was less than 10 years old and was unique to her.

5 179. Penny's tattoo did not match any tattoo Carole Rozak had.

6 180. On information and belief, Penny's tattoo does not match anyone else's.

7 181. The officer who claimed that he got a hit on Penny's tattoo either lied or
8 made that claim with reckless disregard for the truth.

9 182. After the officer said he got a hit on Penny's tattoo, one or more officers
10 took pictures of Penny's tattoo.

11 183. The female officer who said she was a supervisor told Penny that because
12 Penny's fingerprints matched, Penny would have to be strip searched and
13 detained.

14 184. The same officer told Penny she wouldn't be allowed to wear the hair tie
15 that was in Penny's hair.

16 185. Penny flung the hair tie to the officer, who said that Penny could buy a
17 new one where she was going to be detained.

18 186. Penny pointed out that she had nothing with which to buy anything; she
19 had no wallet or purse.

20 187. Before strip searching Penny, the female officer who said she was a
21 supervisor asked Penny if she had a scar.

1 188. Penny said she did and explained that the scar was an abdominal scar
2 from surgery on her reproductive organs; it was not a scar from a caesarean-
3 section procedure.

4 189. Penny indeed has the abdominal scar she described.

5 190. Many women have abdominal scars from caesarean sections.

6 191. Penny's scar is different from a caesarean-section scar.

7 192. For example, Penny's scar runs from one hip bone to the other, whereas
8 caesarean-section scars are generally smaller.

9 193. Penny was strip searched, meaning she had to strip naked in front of the
10 officer doing the search (the female officer who had called Penny's sister), lift
11 her breasts, turn around, spread her butt cheeks, squat, and cough three times.

12 194. With her arms and legs once again shackled after the strip search, Penny
13 was placed in an additional "block" wrist restraint.

14 195. She was then loaded onto a bus with other male and female detainees.

15 196. When the officer told Penny that she would be detained because her
16 fingerprints matched, Penny figured that meant she would be held in a nearby
17 jail cell.

18 197. She was wrong.

19 198. Instead, Penny would be transported more than an hour's drive away to
20 a federal detention facility and treated like a violent convicted felon overnight.

1 199. The officers at the U.S. Marshals office who claimed that Penny's
2 fingerprints matched those of Carole Rozak and who spoke to Penny's sister
3 (Defendants Two Unknown Named Agents of the United States Marshals
4 Service) were acting within the scope of their offices or employment when
5 contributing to Penny's continued detainment.

6 200. Comparing detainees' physical features and other identifying
7 information to identifying information about criminal defendants like Carole
8 Rozak is the kind of conduct that these employees were employed to perform.

9 201. These two officers' conduct, misidentifying Penny and causing Penny's
10 continued detention, took place substantially within the authorized time and
11 space limits of the officers' employment.

12 202. These two officers' conduct misidentifying Penny was actuated, at least
13 in part, by a purpose to serve their employer, in aiming to secure the detention
14 of a subject of an arrest warrant.

15 203. These two officers consciously and deliberately disregarded all
16 indications that Penny was not Rozak. Instead, they aimed to keep Penny
17 detained, regardless of whether she was innocent or the subject of a warrant,
18 and to subject her to criminal proceedings. In doing so, the officers
19 demonstrated reckless or callous indifference to Penny's rights.

1 ***C. Penny is transported to a federal detention facility, strip searched***
2 ***again, and held in a cold cell overnight without a blanket.***

3 204. On the bus, Penny was not allowed to wear a seatbelt; indeed, there were
4 no seatbelts for the detainees.

5 205. Penny was transported, with the other detainees on the bus, to a federal
6 detention facility in Florence, Arizona.

7 206. The drive took more than an hour.

8 207. During the drive, Penny worried for her safety and that of the other
9 detainees, who could have been badly injured in the event of a vehicle crash or
10 other dangerous driving incident.

11 208. She had this worry because her limbs and the other detainees' limbs
12 were restrained, and they were not secured in seatbelts. They had limited
13 ability to stabilize and brace themselves with their hands and feet.

14 209. After arriving at the federal detention facility, Penny learned that she
15 was being detained not as herself but as Carole Rozak.

16 210. Penny learned this because the detainees were called by name.

17 211. When Carole Rozak's name was called, none of the detainees identified
18 themselves as that person.

19 212. Indeed, it was not any of their names.

20 213. At least one other person looked at Penny and said something along the
21 lines of, "That's you."

- 1 214. Penny responded that the name was not hers.
- 2 215. An officer asked Penny's birthdate, and Penny gave that information.
- 3 216. The officer remarked to another officer that none of the information
- 4 matched.
- 5 217. Regardless, Penny was treated as if she were Carole Rozak.
- 6 218. Penny was strip searched a second time, in a holding cell, in front of
- 7 dozens of other women.
- 8 219. Officers took from Penny the few possessions she had on her person: her
- 9 clothing and slippers.
- 10 220. Penny was given prison clothing to wear.
- 11 221. She was re-shackled.
- 12 222. Penny and some of the other women detainees were locked in a second
- 13 holding cell.
- 14 223. The cell was cold. It had one toilet, which was leaking water on the
- 15 ground.
- 16 224. There was a sink but no soap or paper towels.
- 17 225. Penny asked to make a phone call.
- 18 226. Officers did not allow her to make any phone calls.
- 19 227. At about 11:00 p.m., Penny and other detainees were taken to another
- 20 part of the detention facility for the booking process.
- 21 228. Again, detainees were called by name.

1 229. When Carole Rozak's name was called, none of the detainees identified
2 themselves as that person.

3 230. Again, at least one other person looked at Penny and said something
4 along the lines of, "That's you."

5 231. Penny again responded that the name was not hers.

6 232. An officer said something along the lines of, "Why are you making this
7 so hard?"

8 233. Penny explained that she is not Carole Rozak and that Penny did not
9 want anyone to accuse her of indicating otherwise.

10 234. When writing on booking documents, Penny told the officers that she
11 was writing and signing her true name, Penny Lynn McCarthy.

12 235. The officers told her they didn't care what she signed.

13 236. On each document she signed thereafter, Penny wrote her true name,
14 Penny McCarthy or Penny Lynn McCarthy, along with, "I was born Penny
15 Lynn Burns, born on [month] [day¹], 1957 to Robert and Donna Burns in Los
16 Angeles, Calif."

20
21 ¹ Penny wrote the exact, true date of her birth. The month and day are omitted
22 from this complaint for privacy purposes. *See* Fed. R. Civ. P. 5.2(a).

1 237. A young female officer who was booking Penny remarked something
2 along the lines of, "Someone's going to get into a lot of trouble for this, aren't
3 they?"

4 238. Penny agreed and again insisted that she was not Carole Rozak.

5 239. After the booking process, Penny went through a medical screening
6 process.

7 240. She was required to provide a urine sample, which was used for a
8 pregnancy test.

9 241. When Penny was told that the urine sample was for a pregnancy test,
10 she explained that she can't be pregnant because she'd had a hysterectomy.

11 242. Still, Penny was ordered to provide the urine sample, and she did.

12 243. Penny's blood pressure was measured.

13 244. She was told that her blood pressure was high.

14 245. She responded that of course her blood pressure was high; she was being
15 detained in what appeared to be a federal prison for dangerous criminals, as
16 someone who was not her.

17 246. Penny asked to make a phone call.

18 247. One or more officers told her that it was too late to make a phone call.

19 248. Penny and other detainees who had completed the booking and medical
20 processes were then locked in a holding cell.

21 249. The cell was cold.

1 250. Penny and the other women being added to the cell were not given any
2 blankets.

3 251. Officers instructed Penny and other women not to huddle together for
4 warmth.

5 252. Penny was held in the cell for the rest of the night and early morning.

6 253. Penny did not sleep at all.

7 254. She spent the time trying to stay warm and figure out how to avoid using
8 the toilet or touching surfaces that appeared unsanitary.

9 255. Parts of the cell were wet with what appeared to be water from the toilet.

10 256. Penny remained with her legs shackled and one wrist shackled to her
11 waist while locked in the cell.

12 257. Penny was physically uncomfortable and distraught the entire time she
13 was detained.

14 ***D. Penny is strip searched a third time and transported back to***
15 ***Phoenix for the initial appearance of Carole Rozak.***

16 258. Penny thought she heard an officer say that the bus back to Phoenix
17 would depart at 5:00 a.m.

18 259. Before being placed on that bus back to Phoenix, Penny was strip
19 searched a third time.

20 260. This strip search was, again, in front of dozens of other women.

1 261. After the strip search, Penny was again placed in restraints, with her
2 legs shackled together and her wrists shackled to her waist and placed in a
3 “block” restraint.

4 262. She was then loaded on the bus with other detainees.

5 263. Again, she was not placed in a seatbelt, as there were none for the
6 detainees.

7 264. Again, she feared for her and the other detainees’ safety on the ride back
8 to Phoenix.

9 265. At or near the Sandra Day O’Connor Courthouse in Phoenix, Penny met
10 with Assistant Federal Public Defender Ana Botello.

11 266. In the afternoon, at 3:45 p.m. (more than 24 hours after her arrest),
12 Penny was present and in custody for the initial appearance of Carole Rozak
13 under Federal Rule of Criminal Procedure 5.

14 267. Ms. Botello explained to the court that the woman there (Penny) claimed
15 to be Penny Lynn McCarthy, not the criminal defendant Carole Anne Rozak.

16 268. Ms. Botello asked the court to appoint her to represent Penny.

17 269. The Assistant United States Attorney who appeared for the government,
18 Kevin Rapp, explained to the court that the supervised-release violation was
19 25 years old.

1 270. Mr. Rapp said that the government was not seeking detention, in part
2 because even if Penny were Carole Rozak, she'd had no criminal history in the
3 past 25 years.

4 271. Mr. Rapp said that the government would like an identity hearing, given
5 that Penny claimed not to be Carole Rozak.

6 272. Mr. Rapp asked the court to reset the identity hearing (moving it back
7 from that Friday, March 8, 2024), so that the government could have more time
8 to complete fingerprint and DNA-sample comparisons.

9 273. Mr. Rapp indicated that the government proposed to release Penny in
10 the meantime.

11 274. The court asked Mr. Rapp whether Penny's fingerprints had matched
12 Carole Rozak's or whether the fingerprint comparisons were still pending.

13 275. Mr. Rapp stated that they were still pending.

14 276. Mr. Rapp stated that the U.S. Marshal who had looked at and compared
15 Penny's fingerprints to Rozak's is not qualified to make an assessment of
16 whether the fingerprints matched, and that Mr. Rapp wanted someone who is
17 trained to look at the fingerprints for a proper comparison.

18 277. The judge asked why Penny had been arrested as Rozak.

19 278. Mr. Rapp said that was a fair question and one that he'd had, as well.
20
21
22

1 279. Mr. Rapp said that he'd been provided open-source documents
2 suggesting that Penny was Carole Anne Rozak, but those documents were not
3 sufficient to go forward with a hearing.

4 280. Mr. Rapp said he had called the probation office in Tulsa, Oklahoma, and
5 that the arrest was "strictly based upon information that they had," such as
6 "Facebook postings, information from the pre-sentencing report that was
7 generated in 1999, and some aliases" that Rozak had allegedly used.

8 281. He said that the misidentification also came from scars on Penny's body.

9 282. Mr. Rapp acknowledged, though, that anyone could have scars on those
10 particular places of the body.

11 283. More importantly, though, Penny's scar could not have been a basis for
12 her arrest.

13 284. No officer knew about Penny's abdominal scar before she was strip
14 searched.

15 285. Penny's scar on her abdomen was not visible to the officers who arrested
16 her.

17 286. Nor was there any publicly available information on Facebook about
18 Penny's scar.

19 287. The court appointed Ms. Botello to represent Penny.

20 288. Ms. Botello explained to the court that Penny had family present who
21 could confirm her identity, that Penny owned her home in Phoenix, that Penny
22

1 had no criminal history, that Penny had a job in Phoenix, and that Penny was
2 cooperative.

3 289. Indeed, Penny's sister and Penny's long-time friend were in the
4 courtroom.

5 290. Ms. Botello had contacted them before the hearing.

6 291. The court did not take any evidence about Penny's identity.

7 292. The judge stated that she would like the results of the DNA analysis
8 because fingerprint evidence is sometimes unreliable.

9 293. Mr. Rapp said he agreed "on all counts," meaning that among the things
10 he agreed with was the court's statement that fingerprint evidence is
11 sometimes unreliable.

12 294. The court set an identity hearing for April 9, 2024.

13 295. The court released Penny while ordering her to: (1) appear at all court
14 proceedings as required, and to personally appear for the April 9, 2024 identity
15 hearing; (2) maintain weekly contact with Ms. Botello; and (3) not commit any
16 federal, state, or local crime.

17 296. Penny was released at about 5:00 p.m.

18 297. From about the time Penny was arrested in front of her house until her
19 release more than 24 hours later, her legs were shackled and at least one wrist
20 was restrained—except during the strip searches.

1 ***E. The government ends proceedings, begins an internal investigation,***
2 ***and denies Penny’s administrative claim.***

3 298. The results of the government’s fingerprint and DNA tests indicated that
4 Penny’s fingerprints and DNA did not match those of Carole Rozak.

5 299. Four days before the identity hearing, on April 5, 2024, the United States
6 moved to dismiss the Rule 5 proceedings in Rozak’s supervised-release case
7 and to vacate the identity hearing scheduled for April 9, 2024.

8 300. The government’s motion stated that the United States did not intend to
9 proceed forward at the identity hearing, “and therefore dismissal of this matter
10 and vacatur of the hearing is in the interest of justice.”

11 301. The court granted the motion on April 8, 2024.

12 302. The United States Marshals Service issued a statement that “[t]he U.S.
13 Marshals Service has received confirmation from fingerprint analysis that Ms.
14 Penny McCarthy is not the fugitive Carole Anne Rozak, wanted for an
15 outstanding parole violation warrant in Oklahoma.”

16 303. On information and belief, the U.S. Marshals Service claimed that it was
17 “conduct[ing] a thorough review” of Penny’s arrest and the officers’ actions.

18 304. But, again on information and belief, whatever review the U.S. Marshals
19 Service has conducted has produced no meaningful disciplinary actions or
20 policy changes, or other corrective action.

1 305. To the contrary, the U.S. Marshals Service issued the following
2 statement in part: “A preliminary review of this investigation indicates that
3 USMS [United States Marshals Service] officials followed proper procedures,
4 in good-faith reliance on the outstanding warrant. The USMS will continue its
5 evaluation of the investigation of this matter. The USMS regrets any
6 inconvenience caused by the mistaken identification of Ms. McCarthy.”

7 306. On November 18, 2024, the United States House of Representatives
8 Committee on the Judiciary, through Chairman Jim Jordan and Chairman of
9 the Subcommittee on Crime and Federal Government Surveillance Andy
10 Biggs, sent a letter to the Department of Justice’s Inspector General, Michael
11 Horowitz, asking for an investigation into the matter and a report back to the
12 Committee on findings and recommendations.

13 307. In the letter, the authors stated that “[a]lthough the USMS claims it is
14 conducting a review of the actions taken by their agents, an internal review is
15 not enough.”

16 308. Chairman Biggs also said, “[W]hat happened to Mrs. McCarthy is
17 something that really shouldn’t happen to anybody.”

18 309. On information and belief, the Department of Justice has begun an
19 internal investigation into the matter but has not reported findings back to the
20 Committee or taken any other action.

1 310. On information and belief, no disciplinary actions have been taken
2 against any officers based on the events underlying this action.

3 311. On information and belief, no internal policies have changed based on
4 the events underlying this action to prevent similar rights violations from
5 recurring.

6 312. On information and belief, no other corrective action has been taken by
7 the government to prevent similar incidents from happening to other innocent
8 people.

9 313. On November 26, 2024, Penny submitted, under the Federal Tort Claims
10 Act, an administrative claim to the United States Marshals Service, using
11 Standard Form 95.

12 314. The Marshals Service did not respond to the claim within six months.

13 315. Penny's administrative claim was deemed denied on May 26, 2025.
14

15 ***F. The officers failed to run basic checks on Penny's identity.***

16 316. The warrant to arrest Carole Rozak was issued on April 15, 1999 by the
17 United States District Court for the Northern District of Oklahoma.

18 317. The warrant was issued based on Rozak's alleged violation of supervised-
19 release conditions.

20 318. Specifically, the warrant was issued because Rozak apparently had
21 failed to report to a probation office after being released from federal custody.
22

1 319. Attached to the warrant was a petition on supervised release.

2 320. The petition indicated that Rozak had been released from federal custody
3 in Harris County, Texas, in January 1999, and had failed to report to a federal
4 probation office within seventy-two hours of her release, as required.

5 321. The petition included attachments: certified copies of judgments in three
6 criminal cases (which ordered Rozak to report to a probation office), and a copy
7 of a letter and envelope mailed to Rozak's last known address.

8 322. The envelope had been stamped by postal authorities as undeliverable.

9 323. The copies of the judgments attached to the petition and warrant
10 indicated that Rozak (named Carole Anne Milligan Rozak in the judgments)
11 had been prosecuted in the United States District Court for the Northern
12 District of Oklahoma.

13 324. On information and belief, the individual Defendants had access to all
14 the information contained in the three criminal case files for Carole Rozak:
15 United States District Court for the Northern District of Oklahoma case
16 numbers 1997-cr-180, 1998-cr-022, and 1998-cr-023.

17 325. Officers of the federal government had collective knowledge of all the
18 information about Carole Rozak within the possession of United States
19 agencies.

20 326. The judgments in the three criminal case files indicated that on June 19,
21 1998, the United States District Court for the Northern District of Oklahoma
22

1 entered judgments against Rozak for bank fraud, interstate transportation of
2 stolen property and causing a criminal act, and making a false statement to a
3 financial institution.

4 327. These were nonviolent crimes.

5 328. Rozak had not been convicted of any violent crimes.

6 329. The judgments indicated that the crimes were completed by September
7 1, 1997; September 30, 1996; and November 2, 1995.

8 330. The judgments listed Rozak's social security number and indicated that
9 she and her social security number are Canadian.

10 331. Although Rozak is Canadian, the crimes for which she was convicted
11 were entirely domestic. No part of those crimes involved activity outside of the
12 United States.

13 332. Specifically, Rozak was accused of defrauding banks within the United
14 States and of transporting two vehicles across state lines (but within United
15 States borders) after acquiring them by fraud.

16 333. Likewise, Rozak's probation violation was entirely a domestic matter.

17 334. The warrant for Rozak's arrest was based entirely on her failure to check
18 in with a probation officer.

19 335. The warrant was not based on an alleged illegal entry or exit to the
20 United States.

1 336. The officers attempting to execute the warrant had no reason to believe
2 that Rozak was accused of illegal entry or exit to the United States.

3 337. The judgments stated that Rozak's birthdate was in 1953.

4 338. The year, month, and day listed as Rozak's birthdate all are different
5 from Penny's birthdate.

6 339. The judgments listed Rozak's residence and mailing address as the Tulsa
7 County Jail in Tulsa, Oklahoma.

8 340. The warrant stated that Rozak was forty-five years old when the warrant
9 was issued.

10 341. The letter and envelope attached to the warrant listed an address in
11 Cambridge, Ontario, Canada as Rozak's residence.

12 342. The letter and envelope had been mailed from the United States
13 Probation Office in Tulsa, Oklahoma.

14 343. The criminal case docket for one of the three cases in which judgment
15 was entered against Rozak (for transporting stolen goods and causing a
16 criminal act) says that "Carole Ann Rozak" was "also known as Penny Leigh
17 Burns also known as Dianne Allen also known as Leslie Ackerman Tanner."

18 344. The criminal case docket for another of the three cases in which
19 judgment was entered against Rozak (for bank fraud) says that "Carole Ann
20 Rozak" was "also known as Mary Leslie Pye also known as Leslie A Tanner
21 also known as Susan Rigler Sherman also known as Penny Barnes."
22

1 345. The criminal case docket for the last of the three cases in which judgment
2 was entered against Rozak says that “Carole Ann Rozak” was “also known as
3 Marilee J Graves.”

4 346. On information and belief, Carole Rozak may have been known as
5 Sandra Evans for a time in the early 1990s. See <https://perma.cc/EF92-LWB4>.

6 347. One criminal case file includes a warrant for Rozak’s arrest issued
7 December 10, 1997, out of South Carolina.

8 348. That warrant states that Carole Rozak had no known scars, tattoos, or
9 distinguishing marks.

10 349. Other than one criminal case file’s indication that Carole Rozak was
11 “also known as Penny Leigh Burns,” no one had any reason to believe Penny
12 was Carole Rozak by another name.

13 350. Rozak’s criminal case files state that Rozak’s real name is Carole Anne
14 Milligan Rozak.

15 351. On information and belief, Milligan is Carole Rozak’s maiden name.

16 352. Penny McCarthy had no connection to Carole Rozak.

17 353. On information and belief, Carole Rozak was born in London, Ontario,
18 Canada.

19 354. On information and belief, Carole Rozak has a sister who lives in
20 Canada.

- 1 355. Penny's name, Penny Lynn McCarthy, is not an alias for Penny. Penny
2 Lynn McCarthy is her real name.
- 3 356. Penny was born in California.
- 4 357. Penny was born in 1957.
- 5 358. Penny is more than four years younger than Rozak.
- 6 359. Penny was born in a different month and on a different day of the month
7 than Carole Rozak.
- 8 360. Penny has a social security number different from Rozak's.
- 9 361. Penny's social security number was issued by the United States, not
10 Canada.
- 11 362. Each digit of Penny's social security number is a different number from
12 the corresponding digit in Rozak's social security number; not a single digit
13 matches.
- 14 363. Penny's fingerprints do not match Carole Rozak's.
- 15 364. Carole Rozak's eyes are green.
- 16 365. Penny's eyes are blue.
- 17 366. Rozak's criminal case files include a letter hand-written by Rozak, along
18 with her signature on many documents.
- 19 367. Penny's handwriting is distinct from Carole Rozak's.
- 20 368. Penny's signature is distinct from Carole Rozak's.
- 21 369. While detained, Penny hand wrote on documents.

1 370. Penny's signature was reproduced on the driver's licenses she had at
2 home when officers arrested her.

3 371. Penny's signature was on documents that were within the government's
4 possession before her arrest, such as tax documents.

5 372. On information and belief, Carole Rozak did not have and has never had
6 a tattoo resembling Penny's.

7 373. On information and belief, Carole Rozak did not have and has never had
8 a scar resembling Penny's.

9 374. At the time of the events underlying this action, Penny had a REAL ID
10 driver's license issued by Colorado on February 27, 2020 and expiring August
11 4, 2025.

12 375. The issuance of that identification card met the United States
13 government's identification standards set out in the REAL ID Act of 2005.

14 376. By the time of the events underlying this action, Penny's residence had
15 never been in Canada, Oklahoma, South Carolina, or Texas.

16 377. Penny has never been to Canada.

17 378. Penny had not been to Oklahoma, South Carolina, or Texas other than
18 for family visits or trips.

19 379. Penny has never been charged with a crime in Oklahoma, South
20 Carolina, Texas, or any other state except Colorado.

380. Penny has never been charged with any crime other than a traffic infraction, which was in Colorado.

381. Penny has never been incarcerated.

382. Penny has never been on probation.

383. Penny has never gone by the name Carole Rozak, Carole Ann Rozak, Carole Anne Rozak, Carole Milligan, Carole Ann Milligan, Carole Anne Milligan, Carole Ann Milligan Rozak, or Carole Anne Milligan Rozak.

384. Penny has never gone by the name Penny Leigh Burns, Penny Barnes, Dianne Allen, Leslie Ackerman Tanner, Leslie Ackerman, Leslie Tanner, Mary Leslie Pye, Mary Leslie, Mary Pye, Leslie Pye, Marilee Graves, or Marilee J. Graves.

385. Penny has always gone by her given name, Penny.

386. Penny's middle name is and has always been Lynn.

387. Penny has always used her true middle name, Lynn.

388. Penny has always gone by her legal name.

389. Penny has many immediate family members who all reside in the United States, including twelve siblings or half-siblings, five children, and twelve grandchildren.

390. Penny's last name was Burns only for the first 17 years of her life.

391. Penny's last name then changed to Moore, due to marriage to Timothy Moore.

1 392. Penny's last name was Bonato for more than 30 years, changed from
2 Moore due to marriage to John Bonato.

3 393. Government documents issued by the United States and state
4 governments—such as Penny's birth certificate, social security card, driver's
5 license, and marriage licenses—proved that Penny is not Carole Rozak.

6 394. Before the incident, Penny had paid taxes and received social security
7 income.

8 395. Federal tax documents and social security documents proved that Penny
9 is not Carole Rozak.

10 396. The officers who mistook Penny for Carole Rozak—including John Does,
11 Six Unknown Named Agents of the United States Marshals Service, and Two
12 Unknown Named Agents of the United States Marshals Service—did not check
13 any of the government documents proving Penny's identity.

14 397. Alternatively, the officers who mistook Penny for Carole Rozak
15 consciously and deliberately disregarded the information in those documents
16 indicating that Penny is not Carole Rozak.

17 398. The officers who mistook Penny for Carole Rozak, who arrested Penny,
18 and who contributed to her continued detention acted outrageously, creating a
19 substantial risk of tremendous harm to Penny.

20 399. The officers who mistook Penny for Carole Rozak, who arrested Penny,
21 and who contributed to her continued detention, aimed to subject Penny to
22

1 criminal proceedings, regardless of whether she was innocent or the subject of
2 a warrant.

3 400. The officers of the United States government had collective knowledge of
4 Penny's true identity as Penny Lynn McCarthy and not Carole Rozak.

5 401. On information and belief, hundreds or thousands of people have as
6 many identifying characteristics in common with Carole Rozak as Penny did.

7 402. The individual Defendants knew or should have known that it was likely
8 that hundreds or thousands of people have as many identifying characteristics
9 in common with Carole Rozak as Penny did.

10 403. Based on publicly available information from a leading public-records
11 aggregator, at least 165,000 people in the United States have the last name
12 Burns.

13 404. Based on publicly available information from a leading public-records
14 aggregator, approximately 218,240 more people in the United States have the
15 last name Barnes.

16 405. Based on publicly available information from a leading public-records
17 aggregator, approximately 120 to 283 people in the United States have the
18 name Penny Burns. Many of those people are white women in their 60s or 70s,
19 and some have a middle name that begins with L.

20 406. Based on publicly available information from a leading public-records
21 aggregator, approximately 132 people in the United States have the name
22

1 Penny Barnes. Many of those people are white women in their 60s or 70s, and
2 some have a middle name beginning with L.

3 407. Based on publicly available information from a leading public-records
4 aggregator, approximately 285 people in the United States have the name
5 Dianne Allen, another of Rozak's alleged aliases, and some of those people are
6 white women in their 60s or 70s.

7 408. Based on publicly available information from a leading public-records
8 aggregator, approximately 44 people in the United States have the name Mary
9 Pye, another of Rozak's alleged aliases or part of one of her alleged aliases, and
10 some of those people are white women in their 60s or 70s.

11 409. Based on publicly available information from a leading public-records
12 aggregator, approximately 60 people in the United States have the name Leslie
13 Ackerman, another of Rozak's alleged aliases or part of one of her alleged
14 aliases, and some of those people are white women in their 60s or 70s.

15 410. Based on publicly available information from a leading public-records
16 aggregator, approximately 109 people in the United States have the name
17 Leslie Tanner, another of Rozak's alleged aliases or part of one of her alleged
18 aliases, and some of those people are white women in their 60s or 70s.

19 411. Based on publicly available information from a leading public-records
20 aggregator, approximately 8 people in the United States have the name Leslie

1 Pye, another of Rozak's alleged aliases or part of one of her alleged aliases, and
2 some of those people are white women in their 60s or 70s.

3 412. Based on publicly available information from a leading public-records
4 aggregator, approximately 7 people in the United States have the name Susan
5 Rigler, another of Rozak's alleged aliases or part of one of her alleged aliases,
6 and some of those people are white women in their 60s or 70s.

7 413. Based on publicly available information from a leading public-records
8 aggregator, approximately 594 people in the United States have the name
9 Susan Sherman, another of Rozak's alleged aliases or part of one of her alleged
10 aliases, and some of those people are white women in their 60s or 70s.

11 414. Based on publicly available information from a leading public-records
12 aggregator, at least one person in the United States has the name Marilee
13 Graves, another of Rozak's alleged aliases or part of one of her alleged aliases,
14 and she is in her 70s.

15 415. Based on publicly available information from a leading public-records
16 aggregator, approximately 1,486 people in the United States have the name
17 Sandra Evans, another of Rozak's alleged aliases or part of one of her alleged
18 aliases, and some of those people are white women in their 60s or 70s.

19 416. On information and belief, John Does misidentified Penny by
20 mismatching Penny's name on Facebook (Penny McCarthy, with maiden name
21

1 Burns) to one or two of Rozak's alleged aliases (Penny Leigh Burns and/or
2 Penny Barnes).

3 417. On information and belief, John Does neglected to review, or reviewed
4 and consciously and deliberately disregarded, the information on Penny's
5 public Facebook page evidencing that she was not Carole Rozak.

6 418. For example, Penny's public Facebook page stated that her married
7 names include Bonato and Moore and linked to profile pages of family members
8 with those last names.

9 419. Nothing on Penny's public Facebook profile page linked her to Carole
10 Rozak other than the facts that Penny's first name and maiden name matched
11 one of Rozak's many alleged aliases and Penny—like Rozak—is a white woman
12 in her 60s or 70s.

13 420. Penny's public Facebook profile page included photos of her, her tattoo,
14 and some of her family—none of which matched Carole Rozak's information.

15 421. Penny's public profile page also stated, truthfully, that Burns is her
16 maiden name, that Bonato and Moore are former married names, and that her
17 current (married) name is Penny McCarthy.

18 422. On information and belief, John Does communicated to other officers
19 their erroneous conclusion that Penny was Carole Rozak.

1 423. John Does acted within the scope of their offices or employment when
2 misidentifying Penny and informing other officers of their findings and
3 conclusions.

4 424. John Does' investigations of individuals who are the subjects of arrest
5 warrants is the kind of conduct John Does were employed to perform.

6 425. John Does' misidentification of Penny while investigating Carole Rozak
7 was substantially within the authorized time and space limits of John Does'
8 employment.

9 426. John Does' misidentification of Penny while investigating Carole Rozak
10 was actuated, at least in part, by a purpose to serve their employer, because
11 John Does sought to aid the apprehension of the subject of an arrest warrant.

12 427. On information and belief, Six Unknown Named Agents of the United
13 States Marshals Service either themselves misidentified Penny as Rozak using
14 Facebook or other means, or they used misinformation directly or indirectly
15 from John Does when misidentifying Penny as Carole Rozak on her driveway.

16 428. The officers who misidentified Penny, including John Does and Six
17 Unknown Named Agents of the United States Marshals Service, had a duty—
18 before making Penny the subject of an arrest—to confirm that she shared more
19 with Carole Rozak than her sex, race, approximate age, and part of one of
20 Rozak's alleged aliases.

1 429. The officers who misidentified Penny had a duty—before making her the
2 subject of an arrest—to run basic checks on Penny’s identity, such as checking
3 her birthdate, social security number, birth name, legal name, criminal
4 history, residence history, or driver’s license.

5 430. The officers who misidentified Penny failed to run any basic checks on
6 Penny’s background.

7 431. In the alternative, the officers who misidentified Penny ran basic checks
8 on Penny’s background and consciously and deliberately disregarded the
9 results indicating that Penny was not Carole Rozak.

10 432. Had officers taken any steps to investigate Penny’s background, they
11 would have learned that Penny was not Carole Rozak.

12 433. Without running basic checks on Penny’s background, or by disregarding
13 the results of those checks, it was highly likely that the officers’ arrest of Penny
14 would not be an arrest of Carole Rozak.

15 434. The officers who misidentified Penny as Carole Rozak knew or should
16 have known that Penny McCarthy could be, was highly likely to be, and is a
17 person’s legal name.

18 435. The officers who misidentified Penny as Carole Rozak knew or should
19 have known that Penny McCarthy was not Carole Rozak by another name.

20 436. The officers who misidentified Penny as Carole Rozak consciously and
21 deliberately disregarded a high likelihood that Penny was not Carole Rozak.

1 437. The officers who misidentified Penny as Carole Rozak had no documents
2 or other evidence indicating that Carole Rozak used any full name Penny has
3 ever had.

4 438. The officers who misidentified Penny as Carole Rozak had no documents
5 or other evidence indicating that Carole Rozak used the names Penny Lynn
6 Burns, Penny McCarthy, Penny Lynn McCarthy, Penny Moore, Penny Lynn
7 Moore, Penny Bonato, or Penny Lynn Bonato.

8 439. The officers who misidentified Penny as Carole Rozak took no steps to
9 determine whether Penny Lynn McCarthy was Penny's true name.

10 440. The officers who misidentified Penny as Carole Rozak consciously and
11 deliberately disregarded all information they had indicating that Penny was
12 not Carole Rozak.

13 441. No warrant for arrest has ever been issued for Penny.

14 442. A person comparing Penny's in-person appearance to a picture of Rozak
15 would not reasonably identify Penny as Rozak.

16 443. A person comparing Penny's in-person appearance to a 25-year-old
17 picture of Rozak would not reasonably identify Penny as Rozak.

18 444. A person comparing a picture of Penny's face to a picture of Rozak's
19 would not reasonably identify Penny as Rozak.

20 445. A person comparing a picture of Penny's face to a 25-year-old picture of
21 Rozak's would not reasonably identify Penny as Rozak.

1 446. While the two women are white, their other features are distinct.

2 447. On information and belief, the officers who misidentified Penny as
3 Carole Rozak did not have a recent picture of Rozak.

4 448. On information and belief, the most recent picture of Carole Rozak that
5 the officers who misidentified Penny had was at least 25 years old.

6 449. On information and belief, Rozak has never lived at Penny's address in
7 Phoenix.

8 450. On information and belief, the individual Defendants had no reason to
9 believe Rozak lived in Arizona, apart from their misidentification of Penny as
10 Rozak.

11 451. Before aiming their firearms at Penny, the officers had a duty to
12 determine whether she posed an immediate threat to the officers or others.

13 452. It was plain to any reasonable officer that Penny posed no threat to the
14 officers or others when the officers pulled up to her driveway.

15 453. The officers had no reason to believe that Penny was armed.

16 454. The officers had no reason to believe that Penny was dangerous.

17 455. The officers had no reason to believe that Penny—even if she had been
18 Carole Rozak—was armed.

19 456. The officers had no reason to believe that Penny—even if she had been
20 Carole Rozak—was dangerous.

1 457. As a federal prosecutor later recognized, even if Penny were Carole
2 Rozak, she had had no criminal history for the past 25 years.

3 458. The officers had no reason to believe that Penny—even if she had been
4 Carole Rozak—posed a threat to national security.

5 459. Before targeting, aiming firearms at, and arresting Penny, the officers
6 had a duty to run basic checks on Penny’s background, such as looking up
7 Penny’s driver’s license, birth certificate, marriage licenses, social security
8 number, or criminal history.

9 460. Before targeting, aiming firearms at, and arresting Penny, the officers
10 had a duty to determine whether Penny was Carole Rozak or Penny McCarthy.

11 461. Neither before nor after arresting Penny did the officers ask her for
12 identification.

13 462. Neither before nor after arresting Penny did the officers allow Penny to
14 show them her driver’s license, birth certificate, or any other form of
15 identification.

16 463. Neither before nor after arresting Penny did the officers allow Penny to
17 provide them evidence that she was Penny McCarthy and not Carole Rozak.

18 464. Neither before nor after arresting Penny did the officers compare her
19 tattoo to any markings on Carole Rozak.

1 465. Before targeting, aiming firearms at, and arresting Penny, the officers
2 took no steps to determine whether Penny's true identity was Penny Lynn
3 McCarthy.

4 466. In the alternative, before targeting, aiming firearms at, and arresting
5 Penny, the officers took steps to determine whether Penny's true identity was
6 Penny Lynn McCarthy and consciously and deliberately disregarded the
7 resulting information indicating that she was not Carole Rozak.

8 467. Had the individual Defendants taken any steps to investigate Penny's
9 background, and had they not consciously disregarded evidence that Penny
10 was not Carole Rozak, Penny would not have been detained at gunpoint,
11 manacled, placed in a police vehicle, detained at the U.S. Marshals Office,
12 detained at the federal detention facility in Florence, searched multiple times,
13 or presented for the initial appearance of Carole Rozak.

14 468. When Defendants Six Unknown Named Agents of the United States
15 Marshals Service aimed firearms at, detained, and arrested Penny, they were
16 acting within the scope of their offices or employment.

17 469. Executing arrest warrants (even if erroneously) is the kind of conduct
18 those Defendants were employed to perform.

19 470. Those Defendants' detention and arrest of Penny occurred substantially
20 within the authorized time and space limits of their employment.

1 471. The individual Defendants' conduct in aiming firearms at, detaining, and
2 arresting Penny was actuated, at least in part, by a purpose to serve their
3 employer, in aiming to arrest Carole Rozak, the subject of an arrest warrant.

4 472. It would have been obvious to any reasonable officer in the shoes of Six
5 Unknown Named Agents of the United States Marshals Service that Penny
6 was not Carole Rozak.

7 473. Alternatively, it would have been obvious to any reasonable officer in the
8 shoes of Six Unknown Named Agents of the United States Marshals Service
9 that they lacked information needed to identify Penny as Carole Rozak.

10 **INJURIES TO PENNY**

11 474. As a result of Defendants' actions and omissions, Penny suffered a
12 deprivation of her physical liberty.

13 475. As a result of Defendants' actions and omissions, Penny suffered
14 violations of her constitutional rights and common-law rights.

15 476. As a result of Defendants' actions and omissions, Penny spent more than
16 24 hours physically uncomfortable, in restraints much of the time, stripped
17 naked in front of other people three times, and held in cells, one of which was
18 cold and without a blanket to keep warm.

19 477. As a result of Defendants' actions and omissions, Penny was terrified,
20 humiliated, and upset from being held at gunpoint, handcuffed, patted down,
21 shackled, arrested, fingerprinted, DNA-sampled, photographed, detained at
22

1 the U.S. Marshals office in Phoenix and at the federal detention facility in
2 Florence, strip searched three times, transported various places in government
3 vehicles, held for the first appearance of Carole Rozak, and generally treated
4 like a violent criminal.

5 478. As a result of Defendants' actions and omissions, Penny felt violated,
6 betrayed, and simply wronged by her own government's officials. She fears
7 future humiliation and law-enforcement errors resulting from her blundered
8 arrest and continued detention. The experience of being treated like a violent,
9 dangerous criminal was utterly humiliating and de-humanizing.

10 479. Whereas Penny used to feel safe and at ease while at home, walking her
11 dog, and running errands, she no longer feels safe and comfortable at home,
12 she rarely walks her dog for fear that she will again be wrongfully
13 apprehended, and she fears that she will again be misidentified and arrested
14 while out running errands.

15 480. As a result of Defendants' actions and omissions, Penny's property (her
16 clothing) was taken from her.

17 481. Since the incident and as a result of Defendants' actions and omissions,
18 Penny's dog gets frantic around other people. Penny has had to spend money
19 on her dog, for medicinal treatment to keep her dog calm.

20 482. Because of the incident, Penny no longer sleeps as much or as well. She
21 is afraid to be by herself and to be in her own front yard.

1 483. Because of the incident, Penny sold her home and moved out of Arizona.

2 484. But for John Does' failure to run basic checks or conduct minimal
3 investigation into Penny's background, Penny would not have been held at
4 gunpoint, arrested, or further detained.

5 485. But for the failures of Six Unknown Named Agents of the United States
6 Marshals Service to run basic checks or conduct minimal investigation into
7 Penny's background, Penny would not have been held at gunpoint, arrested, or
8 further detained and subjected to the initial appearance of Carole Rozak.

9 486. But for Two Unknown Named Agents of the United States Marshals
10 Service's disregard for whether Penny's fingerprints matched those of Carole
11 Rozak and for evidence that Penny was not Rozak, Penny would not have been
12 transferred to the federal detention facility, prolonging her detention and
13 subjecting her to two additional strip searches and the initial appearance of
14 Carole Rozak.

15 CLAIMS

16 Count 1: Assault

17 *Against Defendants Six Unknown Named Agents of the United States*
18 *Marshals Service, in their individual capacities*

19 487. Penny incorporates and realleges the allegations in paragraphs 1
20 through 486.

1 488. As described above, Defendants Six Unknown Named Agents of the
2 United States Marshals Service intentionally detained Penny at gunpoint,
3 threatened to “hit” her with bullets, a taser, or another weapon; grabbed her
4 by the arm; handcuffed her; patted her down; and shackled her ankles.

5 489. As described above, Defendants Six Unknown Named Agents of the
6 United States Marshals Service consciously and deliberately disregarded plain
7 evidence that Penny was not Carole Rozak and that Penny was
8 nonthreatening.

9 490. Defendants Six Unknown Named Agents of the United States Marshals
10 Service injured Penny when they thus caused her to suffer harmful or offensive
11 contact and placed her in imminent apprehension of harmful or offensive
12 contact.

13 491. As a result of the actions by Six Unknown Named Agents of the United
14 States Marshals Service, Penny suffered emotional distress, the loss of her
15 physical liberty, physical discomfort, and the violation of her civil rights, for
16 which she may recover nominal, compensatory, and punitive damages in
17 amounts to be determined by the factfinder.

Count 2: Battery

Against Defendants Six Unknown Named Agents of the United States Marshals Service, in their individual capacities

492. Penny incorporates and realleges the allegations in paragraphs 1 through 486.

493. As described above, Defendants Six Unknown Named Agents of the United States Marshals Service intentionally grabbed Penny by the arm, handcuffed her, patted her down, and shackled her ankles.

494. Defendants Six Unknown Named Agents of the United States Marshals Service injured Penny when they thus caused her to suffer these harmful or offensive contacts.

495. Defendants Six Unknown Named Agents of the United States Marshals Service consciously and deliberately disregarded plain evidence that Penny was not Carole Rozak and that Penny was nonthreatening.

496. As a result of the actions by Six Unknown Named Agents of the United States Marshals Service, Penny suffered distress, the loss of her physical liberty, physical discomfort, and the violation of her civil rights, for which she may recover nominal, compensatory, and punitive damages in amounts to be determined by the factfinder.

Count 3: Trespass

*Against Defendants Six Unknown Named Agents of the United States
Marshals Service, in their individual capacities*

497. Penny incorporates and realleges the allegations in paragraphs 1 through 486.

498. As described above, Defendants Six Unknown Named Agents of the United States Marshals Service intentionally approached Penny on her land (her driveway) without her consent.

499. These officers remained on Penny's land while handcuffing her and walking her to a police vehicle, again without her consent.

500. These officers were not authorized by law to so intrude on Penny's land.

501. These officers' acts—in intruding on Penny's land to arrest her without consent and with conscious and deliberate disregard for evidence that Penny was not Rozak—were outrageous; those actions created a substantial risk of tremendous harm to Penny and in fact inflicted tremendous harm on Penny.

502. As a result of these Defendants' acts, Penny suffered the loss of her property right to exclude others from her land and to herself possess and use her land. Her false arrest and continued detention also resulted from the officers' unlawful intrusion onto her land. She is entitled to compensatory, nominal, and punitive damages in amounts to be determined by the factfinder.

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503. Penny incorporates and realleges the allegations in paragraphs 1 through 486.

505. These individual Defendants injured Penny when they thus caused her to be so confined.

507. Specifically, Penny knew that her freedom of movement was restricted, and she suffered distress and physical discomfort from the confinement.

509. No officer had a warrant for Penny's arrest.

1 510. The individual Defendants injured Penny when they thus caused her to
2 suffer harmful or offensive contact during her confinement.

3 511. The individual Defendants' acts in causing Penny's detention were
4 outrageous, creating a substantial risk of tremendous harm to Penny and in
5 fact inflicting tremendous harm on Penny.

6 512. As a result of these actions and omissions by the individual Defendants,
7 Penny suffered distress, the loss of her physical liberty, physical discomfort,
8 the violation of her civil rights, and other injuries alleged above, for which she
9 may recover nominal, compensatory, and punitive damages in amounts to be
10 determined by the factfinder.

11 **Count 5: Malicious Prosecution**

12 *Against Defendants Six Unknown Named Agents of the United States*
13 *Marshals Service, John Does, and Two Unknown Named Agents of the United*
States Marshals Service, in their individual capacities

14 513. Penny incorporates and realleges the allegations in paragraphs 1
15 through 486.

16 514. As described above, the individual Defendants Six Unknown Named
17 Agents of the United States Marshals Service, John Does, and Two Unknown
18 Named Agents of the United States Marshals Service intentionally subjected
19 Penny to criminal proceedings under the name Carole Rozak.

20 515. The individual Defendants lacked probable cause to believe Penny was
21 Carole Rozak.

1 516. The individual Defendants lacked probable cause to initiate or continue
2 any criminal proceedings against Penny.

3 517. The individual Defendants initiated or continued the proceedings
4 against Penny not to further the interests of justice but to subject Penny to
5 criminal proceedings regardless of whether she was innocent, regardless of
6 whether there was probable cause to subject her to criminal proceedings, and
7 regardless of whether she was the subject of a warrant.

8 518. The criminal proceedings to which Penny was subjected terminated in
9 her favor, including with dismissal of her from the criminal proceedings.

10 519. The officers' actions that subjected Penny to criminal proceedings were
11 outrageous, creating a substantial risk of tremendous harm to Penny and in
12 fact inflicting tremendous harm on Penny.

13 520. As a result of the actions and omissions by the individual Defendants,
14 Penny was treated as the criminal defendant (Carole Rozak) in criminal
15 proceedings, was subjected to the initial appearance of Carole Rozak under
16 Federal Rule of Criminal Procedure 5, and was subjected to certain orders of
17 the court upon her release from detention.

18 521. As a result of the actions and omission by the individual Defendants,
19 Penny also suffered distress, the loss of her physical liberty, physical
20 discomfort, and the violation of her civil rights, for which she may recover

1 nominal, compensatory, and punitive damages in amounts to be determined by
2 the factfinder.

3 **Count 6: Negligence**

4 *Against Defendants Six Unknown Named Agents of the United States*
5 *Marshals Service, John Does, and Two Unknown Named Agents of the United*
6 *States, in their individual capacities*

7 522. Penny incorporates and realleges the allegations in paragraphs 1
8 through 486.

9 523. As described above, the individual Defendants Six Unknown Named
10 Agents of the United States Marshals Service, John Does, and Two Unknown
11 Named Agents of the United States had a duty to act with reasonable care and
12 to abide by the United States Constitution when executing warrants,
13 identifying targets for arrest, and continuing to detain arrested individuals.

14 524. The individual Defendants breached this duty of care by failing to run
15 basic checks on Penny's background, or by disregarding the results of those
16 checks, which confirmed or would have confirmed that Penny is not Carole
17 Rozak.

18 525. The individual Defendants' actions and omissions were outrageous,
19 creating a substantial risk of tremendous harm to Penny and in fact inflicting
20 tremendous harm on Penny.

1 526. The individual Defendants acted with conscious disregard for whether
2 Penny was Carole Rozak and for whether there was probable cause to detain
3 Penny.

4 527. As a result of the individual defendants' negligent acts and/or omissions,
5 Penny suffered distress, the loss of her physical liberty, physical discomfort,
6 and the violation of her civil rights, for which she may recover nominal,
7 compensatory, and punitive damages in amounts to be determined by the
8 factfinder.

9
10 **Count 7: Fourth Amendment to the United States Constitution**

11 *Against Defendants Six Unknown Named Agents of the United States*
12 *Marshals Service and John Does, in their individual capacities*

13 528. Penny incorporates and realleges the allegations in paragraphs 1
14 through 486.

15 529. The Fourth Amendment to the United States Constitution provides,
16 "The right of the people to be secure in their persons, houses, papers, and
17 effects, against unreasonable searches and seizures, shall not be violated, and
18 no Warrants shall issue, but upon probable cause, supported by Oath or
19 affirmation, and particularly describing the place to be searched, and the
20 persons or things to be seized."
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1 530. As described above, but for the acts and omissions of John Does, Penny
2 would not have been subjected to the detention, arrest, and searches performed
3 by agents of the United States Marshals Service.

4 531. Defendants Six Unknown Named Agents of the United States Marshals
5 Service and John Does lacked probable cause to believe that Penny was Rozak.

6 532. As described above, Defendants Six Unknown Named Agents of the
7 United States Marshals Service intentionally and unlawfully detained Penny
8 at gunpoint, handcuffed her on her driveway, shackled her legs, drove her away
9 from home, and severely disrupted her private life when she had merely been
10 minding her own business at home.

11 533. They also searched her in front of her home and caused her to be strip
12 searched three times thereafter in the presence of others.

13 534. When seizing Penny at gunpoint, Defendants lacked probable cause to
14 believe that Penny was Carole Rozak and had no reason to believe that Penny
15 was armed and dangerous, regardless of whether she were Carole Rozak.

16 535. When patting Penny down, Defendants lacked probable cause to believe
17 that Penny was Carole Rozak and had no reason to believe that Penny was
18 armed and dangerous.

19 536. In causing Penny to be strip searched three times, Defendants lacked
20 probable cause to believe that Penny was Carole Rozak or was otherwise
21

properly detained, and they had no reason to believe that Penny possessed weapons or contraband or was dangerous.

537. No officer had a warrant to search or arrest Penny.

538. Defendants knew or should have known that they lacked a warrant to arrest Penny.

539. Defendants lacked probable cause to believe Penny had committed a crime.

540. No exigency existed to arrest Penny without a warrant for her arrest.

541. Defendants' initial and continued seizure and searches of Penny without probable cause, a warrant, or reasonable belief that she was Carole Rozak violated Penny's rights under the Fourth Amendment.

542. As a result, Penny suffered distress and physical discomfort.

543. Defendants' actions or omissions that subjected Penny to physical detention at gunpoint and continued detention thereafter were taken with reckless or callous indifference to Penny's federally protected rights.

544. It was clearly established that patting down a person without a reasonable belief that the person is properly detained and without reasonable suspicion that she is armed and dangerous violates that person's Fourth Amendment rights.

545. It was clearly established that using deadly force (aiming firearms at Penny), threatening to tase her or "hit" her with some other weapon, and

1 patting her down violated Penny's Fourth Amendment rights without
2 reasonable suspicion that she was armed and dangerous.

3 546. It was clearly established that arresting a person at gunpoint when the
4 officers lack a search or arrest warrant for that person and when the officers
5 lack a reasonable belief that the person is armed and dangerous or suspected
6 of a crime violates that person's Fourth Amendment rights.

7 547. It was clearly established that officers violate a person's Fourth
8 Amendment rights by entering the person's property without a warrant to
9 search or arrest someone there, manacled that person and threatening to
10 further harm him or her without probable cause to believe he or she has
11 committed a crime.

12 548. It was clearly established that officers may not arrest a person based on
13 a warrant to arrest a different person, when the officers lack reasonable belief
14 that the person they arrested is the subject of the warrant.

15 549. Defendants are thus liable directly under the Fourth Amendment. *See*
16 *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S.
17 388 (1971).

18 550. This is an established context for a cause of action under *Bivens*.

19 551. The officers were rank-and-file federal law-enforcement officers
20 enforcing domestic criminal laws.

1 552. The officers unreasonably seized Penny or caused her seizure, which
2 included manacled her on her own property and threatening to harm her
3 more, without probable cause and without a warrant to search or arrest her.
4 *Cf. Bivens*, 403 U.S. at 389.

5 553. After the initial seizure, Penny was taken to the federal courthouse in
6 Phoenix, where she was processed and subjected to a strip search before being
7 transported to a federal detention facility, where she was booked and strip
8 searched twice more. *Cf. Bivens*, 403 U.S. at 389.

9 554. Defendants were not enforcing immigration laws, carrying out border-
10 patrol activities, or addressing a risk to national security; they were enforcing
11 domestic criminal laws.

12 555. As a result of the individual defendants' unreasonable searches and
13 seizure of Penny, she suffered distress, the loss of her physical liberty, physical
14 discomfort, and the violation of her civil rights, for which Penny is entitled to
15 recover nominal, compensatory, and punitive damages from Defendants in
16 amounts to be determined by the factfinder.

17 **Count 8: Fourth Amendment to the United States Constitution**

18 *Against Defendants Two Unknown Named Agents of the United States, in*
19 *their individual capacities*

20 556. Penny incorporates and realleges the allegations in paragraphs 1
21 through 486.

1 557. The Fourth Amendment to the United States Constitution provides,
2 “The right of the people to be secure in their persons, houses, papers, and
3 effects, against unreasonable searches and seizures, shall not be violated, and
4 no Warrants shall issue, but upon probable cause, supported by Oath or
5 affirmation, and particularly describing the place to be searched, and the
6 persons or things to be seized.”

7 558. As described above, Two Unknown Named Agents of the United States
8 intentionally and unlawfully prolonged Penny’s detention, severely disrupting
9 her private life when she had merely been minding her own business at home.

10 559. They also searched her or caused her to be strip searched three times.

11 560. Defendants had no reason to believe Penny was armed and dangerous.

12 561. Defendants had no reason to believe she possessed weapons or
13 contraband or was dangerous.

14 562. Defendants lacked a warrant to search or arrest Penny.

15 563. Defendants knew or should have known that they lacked a warrant to
16 arrest Penny.

17 564. Defendants lacked probable cause to believe Penny had committed a
18 crime.

19 565. Defendants lacked probable cause to believe that Penny was Carole
20 Rozak.

1 566. No exigency existed to arrest Penny without a warrant for her arrest or
2 to send her to the federal detention facility without further confirming that she
3 was Penny McCarthy, not Carole Rozak.

4 567. Defendants' continued seizure and searches of Penny without probable
5 cause, a warrant, or reasonable belief that she was Carole Rozak violated
6 Penny's rights under the Fourth Amendment.

7 568. As a result, Penny suffered distress and physical discomfort.

8 569. Defendants' actions or omissions that subjected Penny to continued
9 detention were taken with reckless or callous indifference to Penny's federally
10 protected rights.

11 570. It was clearly established that patting down a person—much less strip
12 searching them—without reasonable belief that she is properly detained
13 violates that person's Fourth Amendment rights.

14 571. It was clearly established that violently arresting a person, or continuing
15 to hold a person in custody, when the officers lack an arrest warrant for that
16 person and lack a reasonable belief that the person is armed and dangerous or
17 suspected of a crime violates that person's Fourth Amendment rights.

18 572. It was clearly established that officers may not arrest a person or
19 continue to hold a person in custody based on a warrant to arrest a different
20 person, when the officers lack reasonable belief that the person is the subject
21 of the warrant.

1 573. Defendants are thus liable directly under the Fourth Amendment. *See*
2 *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S.
3 388 (1971).

4 574. This is an established context for a cause of action under *Bivens*.

5 575. The officers were rank-and-file federal law-enforcement officers
6 enforcing domestic criminal laws.

7 576. The officers unreasonably continued to hold Penny in custody, or caused
8 her to be held in custody, after she had been manacled on her own property
9 and threatened to be harmed more, without probable cause and without a
10 warrant to search or arrest her. *Cf. Bivens*, 403 U.S. at 389.

11 577. After the initial seizure, Penny was taken to the federal courthouse in
12 Phoenix, where she was processed and subjected to a strip search before being
13 transported to a federal detention facility, where she was booked and strip
14 searched twice more. *Cf. Bivens*, 403 U.S. at 389.

15 578. Defendants were not enforcing immigration laws, carrying out border-
16 patrol activities, or addressing a risk to national security; they were enforcing
17 domestic criminal laws.

18 579. As a result of the individual Defendants' unreasonable searches and
19 seizure of Penny, she suffered distress, the loss of her physical liberty, physical
20 discomfort, and the violation of her civil rights, for which Penny is entitled to
21

1 recover nominal, compensatory, and punitive damages in amounts to be
2 determined by the factfinder.

3 **Count 9: Federal Tort Claims Act**

4 *Against Defendant United States of America*

5 580. Penny incorporates and realleges the allegations in paragraphs 1
6 through 527.

7 581. At all times relevant to this count, the Defendants Six Unknown Named
8 Agents of the United States Marshals Service; John Does; and Two Unknown
9 Named Agents of the United States were acting under color of law and within
10 the scope of their offices or employment as agents of the United States
11 Marshals Service or other federal agencies.

12 582. All the individual Defendants listed above, when detaining Penny, were
13 acting as investigative or law-enforcement officers—that is, as officers of the
14 United States who were empowered by law to execute searches, to seize
15 evidence, or to make arrests for violations of federal law.

16 583. As described above, the individual Defendants' actions and omissions
17 amount to multiple torts recognized by Arizona law, including:

- 18 a. assault;
19 b. battery;
20 c. trespass;
21 d. false imprisonment;

1 e. malicious prosecution; and

2 f. negligence.

3 584. A private person would be liable to Penny under like circumstances for
4 torts under the laws of Arizona.

5 585. As a result of these actions by Defendants Six Unknown Named Agents
6 of the United States Marshals Service, John Does, and Two Unknown Named
7 Agents of the United States, Penny suffered distress, the loss of her physical
8 liberty, physical discomfort, the violation of her civil rights, and other injuries
9 identified above, for which she may recover nominal and compensatory
10 damages in amounts to be determined by the factfinder.

11 586. Defendant United States of America is thus liable under the Federal Tort
12 Claims Act for the acts and omissions of Defendants Six Unknown Named
13 Agents of the United States Marshals Service, John Does, and Two Unknown
14 Named Agents of the United States.

15 **Count 10: Constitutional Claims Against Individual Officers Under**
16 **the Westfall Act**

17 *Against Defendants Six Unknown Named Agents of the United States*
18 *Marshals Service, John Does, and Two Unknown Named Agents of the United*
States Marshals Service, in their individual capacities

19 587. Penny incorporates and realleges the allegations in paragraphs 1
20 through 579.

1 588. The Westfall Act of 1988 states that the remedy against the United
2 States under Federal Tort Claims Act for injury or loss of property resulting
3 from the negligent or wrongful act or omission of an employee acting within
4 the scope of his office or employment is not exclusive for “a civil action against
5 an employee of the Government . . . which is brought for a violation of the
6 Constitution of the United States” 28 U.S.C. § 2679(b).

7 589. At all times relevant to this count, the individual Defendants Six
8 Unknown Named Agents of the United States Marshals Service; John Does;
9 and Two Unknown Named Agents of the United States were acting under color
10 of law and within the scope of their offices or employment as agents of the
11 United States Marshals Service or other federal agencies.

12 590. All the individual Defendants listed above, when detaining Penny, were
13 acting as investigative or law-enforcement officers—that is, as officers of the
14 United States who were empowered by law to execute searches, to seize
15 evidence, or to make arrests for violations of federal law.

16 591. As described above, the individual Defendants’ actions and omissions
17 amount to violations of the Fourth Amendment to the United States
18 Constitution.

19 592. The individual Defendants’ actions and omissions also amount to
20 violations of the Due Process Clause of the Fifth Amendment to the United
21 States Constitution.

1 a. The Due Process Clause of the Fifth Amendment protects against
2 government action that arbitrarily deprives someone of her life, liberty, or
3 property.

4 b. The right to be free from physical restraint is a core liberty interest
5 protected by the Due Process Clause. Any physical detention must serve a
6 legitimate governmental interest.

7 c. The individual Defendants' arbitrary physical detention of Penny
8 and deprivation of her property violated her right to due process.

9 d. As described above, Defendants Six Unknown Named Agents of
10 the United States Marshals Service, John Does, and Two Unknown Named
11 Agents of the United States intentionally deprived Penny of her physical
12 liberty and property.

13 e. Before doing so, Defendants took no steps to establish probable
14 cause to believe that Penny McCarthy was Carole Rozak.

15 f. Indeed, Defendants did not run basic checks on Penny's
16 background to decrease the likelihood that they would erroneously deprive
17 Penny of her liberty and property.

18 g. Defendants lacked a warrant to search or arrest Penny.

19 h. Defendants knew or should have known that they lacked a
20 warrant to arrest Penny.

1 i. Defendants lacked probable cause to believe Penny had committed
2 a crime.

3 j. Defendants lacked probable cause to believe that Penny was
4 Carole Rozak.

5 k. No exigency existed to arrest Penny without a warrant for her
6 arrest.

7 l. Defendants detained Penny because parts of her maiden name
8 matched one of many aliases allegedly used by Carole Rozak, the subject of an
9 arrest warrant.

10 m. It is arbitrary to detain a person and deprive her of her property
11 because she shares part of her maiden name with one of many aliases allegedly
12 used by the subject of an arrest warrant.

13 n. As described above, thousands of people in the United States share
14 at least parts of their names with names allegedly used by Carole Rozak.

15 o. It is arbitrary for law-enforcement officers to execute a warrant—
16 particularly a warrant issued in a different state—on anyone who shares part
17 of their former name with an alias allegedly used by the subject of the warrant.

18 p. Defendants' failure to verify that Penny was Carole Rozak caused
19 Penny's arbitrary arrest and detention and the arbitrary deprivation of her
20 property.

1 q. Such an arbitrary arrest, detention, and deprivation of property
2 was possible only because Defendants' identifying, arresting, and verifying
3 procedures did not adequately safeguard against mistaken deprivations of
4 liberty and property.

5 r. Penny's arbitrary detention was prolonged, and Penny's clothing
6 was taken, because Defendants lacked procedures to adequately ensure that
7 an innocent person is freed once officials realize that they have the wrong
8 person.

9 s. The individual Defendants knew or should have known that they
10 had the wrong person based on information that was readily available to them.

11 t. Even after Penny and Penny's sister explained that the officers
12 made a mistake in detaining Penny, the individual Defendants disregarded all
13 exculpatory evidence and continued to detain Penny.

14 u. The individual Defendants' indifference to Penny's innocence and
15 true identity violated her right to due process.

16 v. As a result of Defendants' unconstitutional seizure of Penny, she
17 suffered emotional harm, physical discomfort, and the other injuries listed
18 above.

19 593. As described above, those constitutional violations also amount multiple
20 torts recognized by Arizona law, including:

21 a. assault;

- b. battery;
- c. trespass;
- d. false imprisonment;
- e. malicious prosecution; and
- f. negligence.

594. The state tort claims above are causes of action against employees of the United States government, and they are brought for violations of the Constitution of the United States. *See generally Buchanan v. Barr*, 71 F.4th 1003, 1012–18 (CADC 2023) (Walker, J., concurring).

595. Specifically, Counts 1 through 6, above, are brought as remedies for the individual Defendants’ violations of the Fourth and Fifth Amendments to the Constitution of the United States.

596. Defendants Six Unknown Named Agents of the United States Marshals Service, John Does, and Two Unknown Named Agents of the United States Marshals Service injured Penny when they acted in violation of the United States Constitution, and those violations are also torts under Arizona law.

597. As a result of the actions by the individual Defendants that violated Penny’s Fourth and Fifth Amendment rights, Penny suffered distress, the loss of her physical liberty, physical discomfort, the violation of her civil rights, and other injuries identified above, for which she may recover nominal, compensatory, and punitive damages in amounts to be determined by the

1 factfinder. Punitive damages are justified because the individual Defendants
2 acted with reckless or callous indifference to Penny's constitutional rights.

3 598. Thus, the remedies provided against the United States under the
4 Federal Tort Claims Act for the acts and omissions of the individual
5 Defendants who are or were employees of the United States are not exclusive.

6 599. Individual Defendants Six Unknown Named Agents of the United States
7 Marshals Service, John Does, and Two Unknown Named Agents of the United
8 States are liable under Arizona state law for their violations of the United
9 States Constitution via the Westfall Act.

10 600. Alternatively, if Defendant United States of America is not liable under
11 the Federal Tort Claims Act for the tortious and unconstitutional acts and
12 omissions of Defendants Six Unknown Named Agents of the United States
13 Marshals Service, John Does, and Two Unknown Named Agents of the United
14 States Marshals Service, and if the Federal Tort Claims Act immunizes those
15 individual Defendants from liability under state law, then the Westfall Act is
16 unconstitutional as applied to Penny and Penny is entitled to proceed against
17 the individual Defendants on her state-law counts directly (Counts 1–6).

1 **PRAYER FOR RELIEF**

2 Plaintiff Penny McCarthy respectfully requests relief as follows:

3 A. An award of nominal, compensatory, and punitive damages against
4 Defendants Six Unknown Named Agents of the United States Marshals
5 Service, John Does, and Two Unknown Named Agents of the United
6 States Marshals Service, for their tortious and unconstitutional acts and
7 omissions.

8 B. An award of nominal and compensatory damages against Defendant
9 United States of America, for the tortious and unconstitutional acts and
10 omissions of its agents.

11 C. A declaration that Penny's rights under Arizona tort law and the Fourth
12 and Fifth Amendments have been violated.

13 D. An award of reasonable attorney's fees and costs against the United
14 States. *See* 28 U.S.C. § 2412.

15 E. All further legal and equitable relief as the Court deems just and proper.

16
17 DATED this 9th day of June, 2025.

18 /s/ Paul V. Avelar
19 Paul V. Avelar
20 *Attorney for Plaintiff McCarthy*
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