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

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Jesus Lopez Saucedo and Maria Lopez  
Bojorquez, husband and wife; Maria  
Soledad Alaniz Gonzalez, a single  
woman, and Angel Alaniz Gonzalez, a  
single man,

No. CV-07-2267-PHX-DGC

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Plaintiffs,

**ORDER**

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vs.

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The United States of America,

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Defendant.

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Plaintiffs suffered severe injuries when the vehicle in which they were riding rolled over near San Luis, Arizona on January 26, 2005. Plaintiffs filed a complaint against the United States pursuant to the Federal Tort Claims Act. Dkt. #1. Plaintiffs allege that federal border patrol agents caused the accident. *Id.* ¶ 12. The complaint asserts negligence and civil rights claims. *Id.* ¶¶ 17-25.

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Defendant has filed motions to dismiss and for summary judgment. Dkt. ##70, 71. The motions are fully briefed. Dkt. ##89, 92, 97. No party requests oral argument. For reasons that follow, the Court will grant the motions in part and deny them in part.

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The parties have filed under seal several briefs and statements of facts (Dkt. ##71, 72, 97, 103) that discuss sensitive law enforcement policies subject to protective orders (Dkt. ##16, 33). As explained more fully below, the Court’s discussion of facts and arguments relating to those policies will be set forth in a separate sealed order (Dkt. #105).

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1 **I. Motion to Dismiss.**

2 Defendant seeks, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure,  
3 dismissal of both the negligence claim and the civil rights claim for lack of subject matter  
4 jurisdiction. Dkt. #70 at 2, 12. In resolving Defendant’s factual attack on jurisdiction (*see*  
5 *id.* at 12 n.4), the Court may review evidence beyond the complaint and resolve factual  
6 disputes where “the jurisdictional issue is separable from the merits of the case[.]” *Thornhill*  
7 *Publ’g Co. v. Gen. Tel. & Elecs.*, 594 F.2d 730, 733 (9th Cir. 1979). Where the question of  
8 jurisdiction and the merits are intertwined, the Court must treat the motion to dismiss as one  
9 for summary judgment. *See Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039-40 & n.3  
10 (9th Cir. 2004).

11 **A. Count Two – Civil Rights Claim.**

12 Count two of the complaint asserts a civil rights claim under 42 U.S.C. § 1983.  
13 Dkt. #1 ¶¶ 22-25. Plaintiffs allege that Defendant was deliberately indifferent to Plaintiffs’  
14 constitutional rights by failing to adequately hire, train, retain, and supervise its employees.  
15 *Id.* ¶¶ 23-24. Defendant argues that the Court lacks subject matter jurisdiction over count  
16 two because sovereign immunity bars constitutional claims against the United States.  
17 Dkt. #70 at 15. Defendant also notes, correctly, that § 1983 claims may be brought only  
18 against state actors. *Id.* at 15 n.5.

19 Plaintiffs agree that liability does not attach under § 1983 (Dkt. #89 at 15), and make  
20 clear that they are not asserting a civil rights claim under *Bivens v. Six Unknown Named*  
21 *Agents*, 403 U.S. 388 (1971). “*Bivens* is a judicially created cause of action against federal  
22 officers arising under the United States Constitution.” *Ting v. United States*, 927 F.2d 1504,  
23 1513 (9th Cir. 1991). Plaintiffs have named no federal officers as defendants in this case;  
24 they sue only the United States government. Because the Court lacks jurisdiction to hear  
25 constitutional damage claims against the United States, *see Rivera v. United States*, 924 F.2d  
26 948, 951 (9th Cir. 1991), the Court will grant the motion to dismiss count two.

27 This conclusion does not dispose of Plaintiffs’ count-one claims under the Federal  
28 Tort Claims Act, 28 U.S.C. §§ 1346, 2671-2680 (“FTCA”). “While *Bivens* is a judicially

1 created cause of action against *federal officers* arising under the United States Constitution,  
2 . . . the FTCA imposes liability on the *United States government* for acts by its employees  
3 that constitute torts in the state where the conduct occurred.” *Tekle v. United States*, 511  
4 F.3d 839, 850 n.8 (9th Cir. 2007) (quoting *Ting*, 927 F.2d at 1513) (emphasis in *Tekle*).  
5 Thus, tort claims may be asserted against the United States government under the  
6 circumstances permitted in the FTCA.

7 **B. Count One – Negligence Claim.**

8 Plaintiffs allege in count one that federal border patrol agents negligently caused the  
9 accident by pursuing Plaintiffs’ vehicle at high speeds and throwing a “spike strip,” also  
10 known as a controlled tire deflation device (“CTDD”), in front of the vehicle. Dkt. #1 ¶¶ 12,  
11 17-21. A CTDD is an expandable tray containing small, hollow steel tubes that puncture the  
12 tires of a passing vehicle and cause a gradual release of air. *See United States v. Guzman-*  
13 *Padilla*, 573 F.3d 865, 875 (9th Cir. 2009). Plaintiffs bring their negligence claim under the  
14 FTCA. Dkt. #1 ¶¶ 1-2.

15 Defendant argues that the Court lacks subject matter jurisdiction over count one  
16 because the claim is barred by the “discretionary function” exception to the FTCA. Because  
17 the facts at issue in this jurisdictional question implicate the merits of Plaintiff’s negligence  
18 claim, the Court will treat Defendant’s motion to dismiss count one as a motion for summary  
19 judgment.

20 **II. Motion for Summary Judgment.**

21 As the party seeking summary judgment under Rule 56, Defendant “bears the initial  
22 responsibility of informing the [Court] of the basis for its motion, and identifying those  
23 portions of [the record] which it believes demonstrate the absence of a genuine issue of  
24 material fact.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Summary judgment is  
25 appropriate if the evidence, viewed in the light most favorable to Plaintiffs, shows “that there  
26 is no genuine issue as to any material fact and that [Defendant] is entitled to judgment as a  
27 matter of law.” Fed. R. Civ. P. 56(c). Only disputes over facts that might affect the outcome  
28 of the suit will preclude the entry of summary judgment, and the disputed evidence must be

1 “such that a reasonable jury could return a verdict for the nonmoving party.” *Anderson v.*  
2 *Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

3 Defendant makes several arguments with respect to count one: (i) the claim is barred  
4 by the discretionary function exception to the FTCA, (ii) Plaintiffs have not shown that the  
5 United States, if a private person, would be liable under Arizona law, (iii) there is no  
6 evidence of a high-speed pursuit, (iv) Plaintiffs cannot establish causation, and (v) Plaintiffs  
7 are not entitled to an award of future medical expenses or loss of consortium damages. The  
8 Court will address each argument.

9 **A. The Discretionary Function Exception to the FTCA.**

10 Plaintiffs claim that Border Patrol Agent Aguilar negligently deployed a CTDD in  
11 front of Plaintiffs’ vehicle. Defendant argues that the claim is barred by the discretionary  
12 function exception to the FTCA, 28 U.S.C. § 2680(a). The Court concludes that factual  
13 issues preclude summary judgment on this argument. Because the Court’s conclusion  
14 necessarily involves sensitive border patrol policies subject to protective orders (Dkt. ##16,  
15 33), the Court will explain its reasoning in a separate sealed order (Dkt. #105). *See*  
16 *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (judicial  
17 records relating to dispositive issues may be sealed for compelling reasons); *Pintos v. Pac.*  
18 *Creditors Ass’n*, 565 F.3d 1106, 1115 (9th Cir. 2009) (same).

19 **B. Negligence Under Arizona Law.**

20 Because liability under the FTCA is to be determined in accordance with the law of  
21 the place where the alleged tortious acts occurred, *see* 28 U.S.C. § 1346(b)(1), Arizona law  
22 applies to Plaintiffs’ negligence claim against the United States. *See Garcia v. United States*,  
23 826 F.2d 806, 810 (9th Cir. 1987). To prevail on that claim, Plaintiffs must show that,  
24 under circumstances similar to those alleged in this case, Arizona law would “make  
25 a ‘private person’ liable in tort.” *United States v. Olson*, 546 U.S. 43, 44 (2005) (quoting  
26 28 § 1346(b)(1)) (emphasis in original); *see* 28 U.S.C. § 2674 (the United States may be  
27 liable in tort “in the same manner and to the same extent as a private individual under like  
28 circumstances”). This “private person” standard must be met even where, as in this case, the

1 alleged tortious conduct entails “uniquely governmental functions.” *Id.* at 46 (quoting  
2 *Indian Towing Co. v. United States*, 350 U.S. 61, 64 (1955)); *see Rayonier Inc. v. United*  
3 *States*, 352 U.S. 315, 318-19 (1957).

4 To establish a claim for negligence under Arizona law, the plaintiff must prove four  
5 elements: a duty requiring the defendant to conform to a certain standard of care, a breach  
6 of that standard, a causal connection between the breach and the alleged harm, and actual  
7 damages. *See Ontiveros v. Borak*, 667 P.2d 200, 204 (Ariz. 1983) (en banc). Defendant  
8 argues that summary judgment is appropriate on count one because Plaintiffs have not shown  
9 that Arizona law would impose liability for negligence on a private person in the  
10 circumstances alleged in the complaint. Dkt. #70 at 17. In support of this argument,  
11 Defendant cites *Tekle v. United States*, 511 F.3d 839 (9th Cir. 2007), in which there was  
12 no majority opinion on the proper application of the FTCA’s private person standard.  
13 Defendant notes that Judge Tashima, in his separate opinion, applied state law governing  
14 purely private individuals without looking to any special law enforcement privileges in  
15 evaluating the federal agents’ conduct during the execution of warrants. *See* 511 F.3d at  
16 850-56. Defendant asserts that this view of the private person standard should apply, and  
17 Agent Aguilar’s conduct is therefore “subject to the standard of care for a citizen taking the  
18 same actions, rather than a comparable public employee like a police officer.” Dkt. #70  
19 at 17.

20 Plaintiffs agree that a purely private person standard applies (Dkt. #89 at 7, citing  
21 *Tekle*, 511 F.3d at 852), and argue that the deployment of the CTDD in this case, if done by  
22 a private person rather than a border patrol agent, would constitute a breach of the general  
23 duty to avoid creating an unreasonable risk of harm to others. *Id.* at 11; *see* Dkt. #1 ¶ 20.  
24 Plaintiffs also analogize the facts of this case to violations of Arizona traffic and criminal  
25 laws (*id.* at 7-8), the law of trespass (*id.* at 10-11), the shopkeeper’s privilege to arrest or  
26 detain a suspected thief (*id.* at 11-2), and the torts of assault and battery (*id.* at 13).  
27 Defendant asserts that those analogies are misplaced because Plaintiffs have not alleged  
28 intentional tort claims (Dkt. #92 at 4-7), but Defendant provides no apt analogy of its own.

1           The parties have cited, and the Court has found, no case in which a private person  
2 deployed a CTDD in front of a passing vehicle. The Court agrees that, under Judge  
3 Tashima’s interpretation of the FTCA and *Olson*, see *Tekle*, 511 F.3d at 850-54, the alleged  
4 actions of Agent Aguilar, if taken by a private person, could support a finding of negligence.  
5 Arizona law imposes a duty on every person “to avoid creating situations which pose an  
6 unreasonable risk of harm to others.” *Ontiveros*, 667 P.2d at 209 (citation omitted); see  
7 Restatement (Second) of Torts § 302, cmt. a (1965). At least one Arizona court has found  
8 that the throwing of an object at a fast-moving vehicle “constitutes a gross deviation from  
9 the standard of conduct a reasonable person would exercise,” and the resulting spontaneous  
10 evasive action places the occupants of the vehicle in “grave peril[.]” *Navajo County Juvenile*  
11 *Delinquency Action*, 793 P.2d 146, 147 (Ariz. Ct. App. 1990) (affirming delinquency finding  
12 where juvenile threw water balloons at passing vehicles).

13           The facts of this case, of course, are quite different from those in *Navajo County*. This  
14 was not a private person throwing an object at a passing vehicle. Plaintiffs were suspected  
15 of entering the United States illegally. Agent Aguilar was a Border Patrol agent and had a  
16 reasonable basis for detaining and arresting Plaintiffs. In Arizona, a private person may  
17 make a citizen’s arrest “[w]hen a felony has been in fact committed and he has reasonable  
18 ground to believe that the person to be arrested has committed it.” A.R.S. § 13-3884(2); cf.  
19 *State v. Goldberg*, 540 P.2d 674, 676 (Ariz. 1975) (en banc) (federal agents have “the power  
20 to make arrests for violations of state laws as private citizens”). Where a citizen’s arrest is  
21 made with unnecessary force, the arresting person is liable in tort. See *Crimmins v. Super.*  
22 *Ct.*, 668 P.2d 882, 887 (Ariz. Ct. 1983) (Feldman, J., concurring).

23           In this case, the trier of fact reasonably could conclude that the actions of Agent  
24 Aguilar, if taken by a private person in an attempt to make a citizen’s arrest, would constitute  
25 the use of unreasonable force. The evidence, construed in Plaintiffs’ favor as required at this  
26 summary judgment stage, shows the following: Plaintiffs were riding in a large, late-model  
27 Chevy Suburban. The Suburban was overloaded and was speeding at more than 60 miles per  
28 hour on an unimproved dirt road surrounded by a soil berm. While Plaintiffs may have

1 entered the United States illegally, they were trying to return to Mexico and were very close  
2 to the border. Agent Aguilar deployed a CTDD in front of the vehicle, causing it to overturn  
3 and injure Plaintiffs. A private person’s deployment of a CTDD under these circumstances  
4 could be found to constitute an unreasonable use of force creating an excessive risk of harm  
5 to Plaintiffs. *See Tekle*, 511 F.3d at 854 (concluding that there was a triable issue as to  
6 whether the force used to detain the plaintiff was reasonable).

7 Under Arizona law, the use of physical force is legally justified in certain  
8 circumstances, *see* A.R.S. §§ 13-401 et seq., and civil liability is precluded where  
9 justification is established, *see* A.R.S. § 13-413. Defendant contends that Agent Aguilar’s  
10 conduct was justified under A.R.S. § 13-404 because he used the CTDD in self-defense when  
11 the Suburban was heading toward him on the right side of the road. Dkt. #70 at 22; *see*  
12 Dkt. #64 at 9, ¶¶ 34-35. Plaintiff Jesus Lopez Saucedo has testified that at no time did the  
13 Suburban driver turn toward Agent Aguilar and the Suburban “was going straight down the  
14 road” when Aguilar threw the CTDD across the road. Dkt. #64-11 at 17. Plaintiff Angel  
15 Alaniz Gonzalez similarly testified that “the driver of the Suburban never goes for [Agent  
16 Aguilar].” Dkt. #64-12 at 23. Whether Agent Aguilar acted in self defense is a factual  
17 question that must be resolved at trial. The Court will deny summary judgment with respect  
18 to Defendant’s argument that Plaintiffs have failed to show that Arizona law would make a  
19 private person liable for negligence under circumstances similar to those in this case.

20 In its reply (Dkt. #92 at 8), Defendant cites Judge Fisher’s concurring opinion in  
21 *Tekle*, which addressed the tension between the FTCA’s private person standard and other  
22 federal law which grants law enforcement officers “special privileges.” 511 F.3d at 857.  
23 Judge Fisher noted that these privileges, among other things, authorize federal law  
24 enforcement officers to use reasonable force in arresting suspects without committing a tort,  
25 and yet that same act, if done by a private party, would often not be privileged from civil tort  
26 liability under state law. *Id.* The Court shares Judge Fisher’s concern, and agrees that  
27 because *Olson* did not involve special law enforcement privileges, and because the FTCA’s  
28 text does not clearly foreclose their availability, the United States should not be precluded

1 from raising them as a defense to tort liability. *See id.*

2 Defendant, however, has not identified any applicable privilege in its summary  
3 judgment papers. Defendant asserts that “Plaintiffs’ argument ignores the privileges  
4 accorded to law enforcement officers” (*see* Dkt. #92 at 8), but Defendant has not shown that  
5 Plaintiffs bear the burden of proof on this issue. *See Tekle*, 511 F.3d at 852 n.10 (noting that  
6 the government failed to raise privilege issue).

7 Citing *United States v. Guzman-Padilla*, 573 F.3d 865 (9th Cir. 2009), Defendant  
8 contends that the use of a CTDD by border patrol agents is reasonable as a matter of law, and  
9 that Plaintiffs’ negligence claim must fail because the United States would otherwise be  
10 liable in tort every time a border patrol agent deploys a CTDD. Dkt. #92 at 6-7. The finding  
11 of reasonableness in *Guzman-Padilla*, however, was made not as a matter of law, but based  
12 on the specific facts of the case. *See id.* at 887-88 (noting that the factual record “amply  
13 supports the district court’s conclusion that the use of the CTDD was safe”). Moreover,  
14 Plaintiffs do not challenge the use of CTDDs in general; they allege that the use of the CTDD  
15 in this case was negligent. *See* Dkt. #1 ¶¶ 12, 20.

16 Defendant further asserts that Custom and Border Protection (“CBP”) policies  
17 regarding the use of CTDDs are irrelevant given the FTCA’s “private person” standard, and  
18 the opinions of Plaintiff’s “police tactics” expert, D.P. Van Blaricom, should be excluded  
19 because they are based those policies. Dkt. #70 at 16-18. Plaintiffs contend that CBP  
20 policies are relevant and present a factual issue as to the applicable standard of care.  
21 Dkt. #89 at 12-13. The Court need not resolve this dispute on summary judgment given its  
22 conclusion, made without reference to CBP policy, that there is a triable issue as to whether  
23 the use of the CTDD in this case constitutes negligence under Arizona law.

### 24 **C. High-Speed Pursuit.**

25 Defendant argues that to the extent the negligence claim is based on Agent Prieto’s  
26 alleged high-speed pursuit of Plaintiff’s vehicle, the claim fails for lack of evidence.  
27 Dkt. ##71 at 8-10, 92 at 1. The Court agrees.

28 Agent Prieto testified that at no time while he was following Plaintiffs’ vehicle did he



1 exceed the posted speed limit. Dkt. #64 at 8, ¶ 28; Dkt. #64-7 at 33. Plaintiffs do not dispute  
2 this evidence, asserting only that “Agent Prieto had ‘no idea’ how fast *the Suburban* was  
3 going when it passed Agent Aguilar’s truck.” Dkt. #102 at 8, ¶ 28 (emphasis added).  
4 Plaintiffs have not testified as to Agent Prieto’s speed. Their expert, Mr. Van Blaricom, has  
5 stated that he has “no way of knowing” the speed at which Agent Prieto was traveling.  
6 Dkt. #72-2 at 47. The Court will grant summary judgment to the extent the negligence claim  
7 is based on an alleged high-speed pursuit of Plaintiffs’ vehicle (Dkt. #1 ¶¶ 12, 20). *See*  
8 *Anderson*, 477 U.S. at 248.

9 **D. Causation.**

10 Defendant’s accident reconstruction expert, Dr. Joseph Perles, has concluded that  
11 several conditions contributed to the rollover accident: the Suburban was traveling on a low-  
12 friction road surface, the high friction soil berm on the edge of the road was a rollover  
13 hazard, the Suburban was overloaded and was traveling about 60 miles per hour, and the  
14 driver likely performed a classic pre-rollover maneuver by making a hard steering correction  
15 to the right after initially swerving to the left. Dkt. #64-13 at 9, ¶ 12. Dr. Perles opines that  
16 none of these conditions was the result of any actions by border patrol agents, and that  
17 because the Suburban driver safely could have straightened out the vehicle after initially  
18 swerving to the left, the rollover ultimately “was caused by the unnecessary rightward  
19 overcorrection taken by the [Suburban driver].” *Id.* at 11, ¶ 16. Defendant argues that  
20 Plaintiffs have no evidence of causation sufficient to overcome Dr. Perles’ opinion.

21 To establish causation under Arizona law, the plaintiff “must show some reasonable  
22 connection between defendant’s act or omission and plaintiff’s damages or injuries.”  
23 *Robertson v. Sixpence Inns of Am., Inc.*, 789 P.2d 1040, 1047 (Ariz. 1990) (en banc). “The  
24 defendant’s act or omission need not be a ‘large’ or ‘abundant’ cause of the injury; even if  
25 defendant’s conduct contributes ‘only a little’ to plaintiff’s damages, liability exists if the  
26 damages would not have occurred but for that conduct.” *Id.* (quoting *Ontiveros*, 667 P.2d  
27 at 205).

28 Plaintiffs have presented evidence of causation sufficient to survive summary

1 judgment. Plaintiff Jesus Lopez Saucedo has testified that the driver of the Suburban lost  
2 control of the vehicle when he swerved to the left to avoid the CTDD thrown by Agent  
3 Aguilar. Dkt. #64-11 at 17-21. A causal relationship between Agent Aguilar’s actions and  
4 the rollover reasonably may be inferred from this testimony. In short, whether the rollover  
5 was caused at least “a little” by Agent Aguilar’s deployment of a CTDD in front of the  
6 Suburban and a spontaneous swerve to the left by the driver (*Robertson* 789 P.2d at 1047),  
7 or by the driver’s “overreaction back to the right” as Dr. Perles opines (Dkt. #103-4 at 3), is  
8 a factual question to be resolved at trial. *See Ontiveros*, 667 P.2d at 208 (the issue of  
9 causation “should ordinarily be a question of fact for the jury under usual principles of  
10 Arizona tort law”). The Court will deny summary judgment with respect to Defendant’s  
11 causation argument.

12 Defendant asserts that Plaintiffs have not disclosed an accident reconstruction expert  
13 (Dkt. #70 at 18), but Defendant does not argue that expert testimony is required to establish  
14 causation. Defendant further asserts that Plaintiffs may seek to rely on Mr. Van Blaricom’s  
15 opinion that the actions Agent Aguilar was a “proximate cause” of the accident, and that this  
16 opinion should be excluded as an impermissible legal opinion. Dkt. #70 at 21-22. The Court  
17 need not address this issue on summary judgment given its conclusion, made without  
18 reference to Mr. Van Blaricom’s “proximate cause” opinion, that there is a triable issue as  
19 to causation.

20 **E. Future Medical Expenses.**

21 Defendant argues that it is entitled to summary judgment on the claims for future  
22 medical expenses by Plaintiffs Maria Soledad Alaniz Gonzalez and Angel Alaniz Gonzalez  
23 (*see* Dkt. #1 ¶¶ 15-16) because they have disclosed no supporting evidence. Dkt. #70 at 23  
24 n.11. Plaintiffs do not refute this argument in their response. The Court will grant summary  
25 judgment with respect to this issue. *See Celotex*, 477 U.S. at 323.

26 Plaintiff Jesus Lopez Saucedo suffered a spinal cord injury as a result of the accident.  
27 In support of his claim for future medical damages, he has disclosed a life care plan (“LCP”)  
28 prepared by clinical nurse specialist Betty Scira. Defendant argues that the LCP lacks the

1 necessary foundation for admission (Dkt. #70 at 23-26), but Defendant does not provide the  
2 LCP for the Court to review. The Court cannot, on summary judgment, conclude that  
3 Plaintiff Lopez Saucedo has presented no evidence from which the trier of fact reasonably  
4 could award him future medical expenses. *See Saide v. Stanton*, 659 P.2d 35, 38 (Ariz. 1983)  
5 (whether future medical expenses are reasonably probable is determined “from all the  
6 relevant circumstances” which are before the trier of fact). The Court will deny summary  
7 judgment with respect to this issue.

8 **F. Loss of Consortium Damages.**

9 Loss of consortium damages are intended to compensate an injured person’s spouse  
10 for the loss of love, affection, companionship, and other aspects of a marital relationship.  
11 *See DeBinder v. Albertson’s, Inc.*, No. CV 06-1804-PCT-PGR, 2009 WL 57096, at \*10  
12 (D. Ariz. Jan. 8, 2009) (citations omitted). Plaintiffs Maria Soledad Alaniz Gonzalez and  
13 Angel Alaniz Gonzalez concede that they do not have proper loss of consortium claims. Dkt.  
14 #89 at 3. The Court will grant summary judgment in this respect.

15 Plaintiffs Jesus Lopez Saucedo and Maria Lopez Bojorquez, husband and wife,  
16 assert that they have “mutual” loss of consortium claims. *Id.* Defendant argues that while  
17 Mrs. Lopez may have a loss of consortium claim based on Mr. Lopez’s injuries, he has  
18 presented no evidence showing that Mrs. Lopez sustained injuries that have affected the  
19 marital relationship. Dkt. ##70 at 26, 92 at 10. Plaintiffs do not address this argument in  
20 their response. The Court will grant summary judgment with respect to Mr. Lopez’s claim  
21 for loss of consortium damages. *See Celotex*, 477 U.S. at 323.

22 **III. Conclusion.**

23 The Court will dismiss the civil rights claim asserted in count two of the complaint  
24 for lack of subject matter jurisdiction. The Court will grant summary judgment in  
25 Defendant’s favor to the extent the negligence claim asserted in count one is based on an  
26 alleged high-speed pursuit of Plaintiffs’ vehicle. The Court also will grant summary  
27 judgment (i) on the claims for future medical expenses asserted by Plaintiffs Maria Soledad  
28 Alaniz Gonzalez and Angel Alaniz Gonzalez and (ii) on the claims for loss of consortium

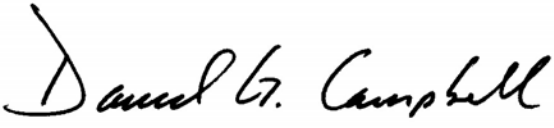
1 damages asserted by Plaintiffs Maria Soledad Alaniz Gonzalez, Angel Alaniz Gonzalez, and  
2 Jesus Lopez Saucedo. Summary judgment will otherwise be denied.

3 **IT IS ORDERED:**

- 4 1. Defendant's motion to dismiss and motion for summary judgment (Dkt. ##70,  
5 71) are **granted in part** and **denied in part** as set forth in this order and the  
6 separate sealed order (Dkt. #105).
- 7 2. The Court will set a final pretrial conference by separate order.

8 DATED this 5th day of November, 2009.

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David G. Campbell  
United States District Judge