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8 **UNITED STATES DISTRICT COURT**
 9 **DISTRICT OF ARIZONA**

11 Terrence Bressi,
 12 Plaintiffs,
 13 vs.
 14 Pima County Sheriff Mark Napier, et al.,
 15 Defendants.

No. CV-18-186-TUC-DCB
**MOTION FOR SUMMARY
 JUDGMENT**
(Oral Argument Requested)

16
 17 The Federal Defendants, under Fed. R. Civ. P. 56, respectfully request that this Court
 18 grant summary judgment on all of Plaintiff Terrence Bressi’s claims against the Federal
 19 Defendants—his claims for injunctive relief in Counts 1 and 2, and his claim for damages
 20 under the Federal Tort Claims Act in Count 8. *See* Doc. 42 (Second Amended Complaint).

21 The Federal Defendants support their motion with the following memorandum.
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. FACTUAL BACKGROUND**

3 **A. Border Patrol operates a permanent immigration checkpoint on State Route**
4 **86 to detect and deter illegal immigrants from coming through the Tohono**
5 **O’odham Nation and into the Tucson metro area.**

6 Near Robles Junction, Arizona, about 1,100 feet west of milepost 146 on State Route
7 86, the United States Border Patrol operates an immigration checkpoint. *See Federal*
8 *Defendants’ Statement of Facts* at ¶ 1 (“SOF 1”). When eastbound drivers approach the
9 checkpoint, speed limit signs and rumble strips alert them to bring their speed down to 15
10 miles per hour before eventually coming to a complete stop. (SOF 2.) Other signs advise
11 drivers that federal officers are present and that drivers are approaching a Border Patrol
12 immigration checkpoint. (SOF 3.) Brightly colored cones, barricades, and sand barrels
13 also mark the approaching checkpoint. (*Id.*)

14 According to official Border Patrol policy, the primary purpose of checkpoints like
15 the one on State Route 86 is “to apprehend illegal aliens and smugglers who have managed
16 to evade apprehension at the border and are attempting to travel to interior locations.”
17 (SOF 4.) At these checkpoints, located on routes that lead traffic away from the border,
18 Border Patrol agents examine occupants of vehicles as to their right to be or remain in the
19 United States. (SOF 5.) The effect of examining drivers and other occupants of vehicles
20 driving on routes leading away from the border is to “deter[] . . . the initial illegal entry.”
21 (SOF 6.) Indeed, checkpoints “greatly enhance the Border Patrol’s ability to carry out the
22 mission of securing the Nation’s borders against terrorism, smugglers of weapons of
23 terrorism, other contraband and illegal aliens.” (SOF 7.)

24 Border Patrol has been operating the checkpoint on State Route 86 since roughly
25 2008. (SOF 8.) Before the checkpoint opened, in the early 2000s, Border Patrol’s Tucson
26 Station was seeing an increase in vehicle smuggling activity. (SOF 9.) Specifically,
27 vehicle smugglers would drive south from Tucson to pick up illegal aliens and narcotics
28 and transport them further north. (SOF 10.) As a result of this increased traffic, Border
Patrol saw more failure to yields, rollover accidents, vehicle spikings, and bailouts,

1 creating a safety concern for agents and the general public. (*SOF* 11.) Border Patrol's
2 Tucson Station command staff decided to target routes of egress from the border to the
3 Tucson metro area. (*SOF* 12.) They did so by first opening the State Route 86 checkpoint,
4 then by opening two additional checkpoints on State Route 286 and Arivaca East. (*Id.*)
5 These locations were selected so Border Patrol could target traffic that was traveling from
6 border areas and where it would be difficult for vehicle to avoid the checkpoints. (*SOF*
7 13.)

8 The State Route 86 checkpoint, in particular, controls illegal immigration coming
9 from Mexico into the Tohono O'odham Nation. Traffic indeed enters illegally into the
10 United States through the Tohono O'odham Nation. (*SOF* 14.) Two roads connect the
11 border area of the reservation to State Route 86—Federal Routes 19 and 21. (*SOF* 15.)
12 State Route 86 can connect traffic from the reservation to the rest of the United States,
13 specifically east toward Tucson. (*SOF* 16.) The checkpoint's location on State Route 86
14 detects and deters smuggling coming through areas of the Tohono O'odham Nation. (*SOF*
15 17.) Originally, the checkpoint was located at milepost 145, right at the border of the
16 Tohono O'odham Nation. (*SOF* 18.) But when Tucson Sector saw an increase in foot
17 traffic coming across the border, Border Patrol noticed that a road just east of the
18 checkpoint was allowing people to get in vehicles and circumvent the checkpoint. (*Id.*)

19 By 2016, the frequency of smuggling, bailouts, and failure to yields had diminished
20 in the Tucson area. (*SOF* 19.) Community safety had improved. (*Id.*) The checkpoints
21 force smugglers to walk further north, giving Border Patrol a better chance to detect them
22 before they get into vehicles. (*SOF* 20.) If any of the three checkpoints within Tucson
23 Station were removed, smugglers would have an unobstructed route to the Tucson metro
24 area. (*SOF* 21.)

25 **B. At the State Route 86 checkpoint, Border Patrol agents stop motorists briefly**
26 **to question them about their citizenship and decide quickly whether to allow**
motorists through or to require them to pull over for secondary inspection.

27 When a driver stops at the checkpoint, an agent should be positioned on the driver's
28 side window of the vehicle. (*SOF* 22.) An agent should watch the occupants of a vehicle

1 closely as the vehicle approaches. (*SOF* 23.) Agents should identify themselves as Border
2 Patrol agents and announce that they are performing an immigration inspection. (*SOF* 24.)
3 Border Patrol agents should ask each occupant of the vehicle a question about their
4 citizenship or immigration status and look inside the “open view” areas of the vehicle.
5 (*SOF* 25.) For example, an agent might say, “Good [morning,] U.S. Border Patrol
6 Checkpoint. Please state your citizenship/place of birth.” (*SOF* 26.) The agent’s inspection
7 of the vehicle—the quick look into the plain view areas and brief questioning about
8 citizenship—should be “a thorough but rapid inspection.” (*SOF* 27.) In other words,
9 agents should decide quickly whether to send the vehicle to the secondary inspection area
10 for further investigation or whether to allow it to proceed. (*SOF* 28.) They may refer a
11 vehicle to secondary on “some or mere suspicion” of an immigration offense or
12 “reasonable suspicion” of a non-immigration federal crime. (*SOF* 29.)

13 Generally, an “oral declaration such as, ‘I am a United States citizen,’ can suffice.”
14 (*SOF* 30.) But if the agent at primary “is not satisfied with the motorist’s answer,” the
15 agent observes something in plain view, or if “something else . . . leads the agent to believe
16 that this person is not being forthcoming,” the agent will send the vehicle to the secondary
17 inspection area. (*SOF* 31.) Although an agent could ask for proof of citizenship in the
18 primary inspection area, it is usually better to refer the vehicle to secondary so traffic can
19 continue to move through the checkpoint. (*SOF* 32.)

20 On rare occasions, motorists refuse to answer a Border Patrol agent’s questions at the
21 checkpoint. (*SOF* 33.) If the motorist “is sitting at the checkpoint with a horn in full blast
22 and creating an additional cause, that’s one of the situations where [Border Patrol] would
23 request for the assistance from the local department because, at that point, they’re holding
24 up the traffic.” (*SOF* 34.) An agent could also access law-enforcement databases to check
25 if the driver is a U.S. citizen. (*SOF* 35.) If it is someone known to agents or supervisors at
26 the checkpoint, an agent should still conduct the routine inspection—looking in plain view
27 areas, running the K9 if a K9 is present—then allow the motorist to continue. (*SOF* 36.)
28

1 Border Patrol agents should stop everyone driving through the checkpoint, even if
2 they are familiar with a driver who frequently comes through. (*SOF* 37.) A known U.S.
3 citizen could still be transporting an immigrant or hiding someone or something. (*SOF*
4 38.) There have been “numerous instances” in Agent Teran’s career where a person who
5 travels through the checkpoint has been later apprehended or charged with smuggling.
6 (*Id.*)

7 **C. Terrence Bressi has driven through the State Route 86 checkpoint about 555**
8 **times over the last 13 years. Occasionally, Bressi’s refusal to comply with**
9 **lawful orders results in prolonged encounters at the checkpoint.**

10 Terrence Bressi works at the University of Arizona. (*SOF* 39.) His job duties require
11 him to drive to Kitt Peak about 50 to 60 times per year. (*Id.*) So he has been driving through
12 the State Route 86 checkpoint about 50 to 60 times per year since January 2008, when the
13 checkpoint was first set up. (*SOF* 40.) Due to COVID-19 restrictions, he has not driven
14 through the checkpoint since March of 2020. (*SOF* 41.) But he will resume his frequent
15 trips to Kitt Peak as soon as COVID-19 restrictions are lifted. (*Id.*)

16 Since the 1990s, Bressi has been carrying cameras with him when he drives to Kitt
17 Peak. (*SOF* 42.) He has attempted to record every encounter he has had with Border Patrol
18 at the State Route 86 checkpoint since its inception in January 2008. (*Id.*) Although he has
19 lost some videos from 2008 and 2009, he has kept videos of every time he has driven
20 through the checkpoint from 2010 forward, except for instances when the checkpoint was
21 not active. (*SOF* 43.) (Bressi initially produced every video he had from between 2008
22 until he filed the complaint, and only produced what he deemed to be relevant videos of
23 encounters after the complaint was filed. (*SOF* 44.) He produced an additional 111 videos
24 from between when the complaint was filed and March 2020 in response to a request for
25 production. (*Id.*))

26 Bressi records his encounters, in his words, to “preserve evidence of the encounters
27 so there’s independent evidence of what transpired and to protect [himself] legally.” (*SOF*
28 45.) He also shares them publicly on websites like YouTube and Vimeo. (*SOF* 46.) He
calls his YouTube and Vimeo channels “Checkpoint U.S.A.,” and his website is

1 RoadblockRevelations.org. (*Id.*) He writes commentary to post along with the videos and
2 publishes Border Patrol agents' names. (*SOF* 47.) According to Bressi, the agents "don't
3 have a privacy interest." (*Id.*)

4 Bressi acknowledged that he often announces the names of the agents he interacts
5 with so their names are identified in his videos; that he demands names of supervisors;
6 that he honks his horn while he is at the checkpoint; he yells at agents to "piss off." (*SOF*
7 48.) He also acknowledged that he never moves his car into the secondary inspection area
8 when agents direct him over there. (*SOF* 49.) Bressi testified that he does not drive into
9 the secondary inspection area because he is "concerned about his safety." (*SOF* 50.) When
10 asked to explain why he is concerned about his safety, Bressi testified that he has only
11 seen a Border Patrol agent with a weapon other than a normal sidearm one time in all of
12 the years he has been driving through the checkpoint. (*SOF* 51.) He has never been injured
13 by Border Patrol agents at the checkpoint. (*SOF* 52.)

14 Throughout this litigation, Bressi has produced videos of 555 checkpoint encounters.
15 During many of these encounter, Border Patrol agents recognize him and, knowing that
16 he is an activist who often escalates the checkpoint stop into prolonged encounters, simply
17 wave him through the checkpoint after briefly looking into the plain view areas of his
18 vehicle. (*SOF* 53.) In fact, that is exactly what happened during the last 10 times Bressi
19 drove through the checkpoint before COVID-19. (*Id.*)

20 During discovery, the Federal Defendants asked Bressi to identify which of the 555
21 video he produced show what he has characterized as a First Amendment violation—in
22 his words, when agents displayed an intent to continue detaining him until he answered
23 their questions. (*SOF* 54.) He identified 18 videos. (*Id.*) In other words, he only claims
24 that he experienced a First Amendment violation 18 out of the 555 times he has driven
25 through the checkpoint, or 3.24% of the time. Moreover, the videos show agents
26 identifying themselves as immigration officers conducting an immigration inspections;
27 Bressi refusing to answer, refusing to move his vehicle to secondary, and often refusing
28 to leave the checkpoint after he has been order to do so:

1 • **April 14, 2005 (Bates #0001)**

2 Bressi drove through another checkpoint (not the State Route 86 checkpoint). The
3 agent asked Bressi his citizenship. Forty seconds into the video, the agent asked Bressi to
4 pull into the secondary inspection area. Bressi refused. After four minutes, agents asked
5 him to leave the checkpoint altogether. Bressi stayed for about 40 more seconds to argue
6 with agents before leaving. (*SOF 55.*)

7 • **March 3, 2008 (Bates #0007)**

8 An agent asked Bressi to state his citizenship and identified the purpose of the
9 checkpoint. Bressi refused to answer. After a one minute and 40 seconds, the agent waved
10 Bressi through the checkpoint. (*SOF 56.*)

11 • **April 22, 2008 (Bates #0010)**

12 An agent greeted Bressi and asked for him to state his citizenship. Bressi refused. The
13 agent identified the purpose of the checkpoint as immigration. After 52 seconds, an agent
14 asked Bressi to move to the secondary inspection area. Bressi refused, and at one minute
15 and 15 seconds into the video, Bressi turned off his vehicle and put it in park, still in the
16 primary lane. Seven minutes and 40 seconds into the video, the agent asked Bressi to leave
17 the checkpoint. Bressi remained and argued with the agent for another minute and 20
18 seconds before leaving nine minutes into the video. (*SOF 57.*)

19 • **November 26, 2008 (Bates #0016)**

20 Two minutes and twenty seconds into the video, Bressi reaches the checkpoint. The
21 agent asks Bressi to state his citizenship and identifies the purpose of the checkpoint.
22 Bressi refuses to answer. Three minutes and 24 seconds into the video, the agent instructs
23 Bressi to drive into the secondary inspection area. Bressi refuses. Nine minutes into the
24 video, a supervisor tells Bressi he can leave. (*SOF 58.*)

25 • **December 20, 2008 (Bates #0020)**

26 The agent asks Bressi to state his citizenship and identifies the purpose of the
27 checkpoint. Bressi refuses to answer. Two minutes and 25 seconds into the video, the
28

1 agents tell Bressi to leave. Bressi refuses to leave, remaining to yell at the agent before
2 leaving 40 seconds later. (*SOF* 59.)

3 • **August 14, 2010 (Bates #0097)**

4 Bressi arrives at the stop sign in primary 34 seconds into the video. The agent at
5 primary apparently recognizes Bressi, places a spike strip down, and gets his supervisor.
6 The supervisor tells Bressi to drive through the checkpoint two minutes and 20 seconds
7 into the video. (*SOF* 60.)

8 • **September 2, 2011 (Bates #0159)**

9 Bressi arrives at the stop sign one minute and 40 seconds into the video. The agent
10 asks Bressi whether he is a U.S. citizen. Bressi refuses to answer. The agent calls for his
11 supervisor. After the supervisor walks over, at two minutes and 50 seconds into the video,
12 the supervisor and agent tell Bressi to leave the checkpoint. Bressi yells at the agents while
13 driving away. (*SOF* 61.)

14 • **September 25, 2011 (Bates #0164)**

15 Bressi arrives at the stop sign 38 seconds into the video. An agent puts his hat up to
16 block Bressi's camera. The agents ask Bressi to roll down his window, then when he
17 refuses, they ask him to move to the secondary inspection area, one minute and 6 seconds
18 into the video. Bressi refuses to move to secondary. The agent apparently calls the
19 Sheriff's Department, then a higher-ranking supervisor. The supervisor's vehicle arrives
20 24 minutes and 20 second into the video, and the supervisor reaches Bressi's vehicle 25
21 minutes and 14 seconds into the video. The supervisor asks Bressi to pull into secondary
22 again, and when Bressi declines, the supervisor tells Bressi he can leave the checkpoint.
23 Bressi remains at the checkpoint for over two minutes to argue with the supervisor before
24 leaving the checkpoint 27 minutes and 35 seconds into the video. (*SOF* 62.)

25 • **March 29, 2013 (Bates #0222)**

26 When Bressi arrives at the stop signs, agents point their phones at Bressi while Bressi
27 presses his horn. Bressi starts to drive away before being waved through. Agents instruct
28 him to stop and drive into the secondary inspection area. Bressi refuses to go into

1 secondary. At three minutes and 33 seconds, a Sheriff's Deputy arrives and speaks to
2 Border Patrol agents before addressing Bressi. At five minutes and 55 seconds, the deputy
3 tells Bressi that he is violating state law by blocking a public roadway. Bressi finally
4 moves to the secondary area at six minutes and 52 seconds into the video. Fifteen minutes
5 into the video, a deputy asked Bressi for his driver's license. Twenty-one minutes into the
6 video, a deputy issued Bressi a citation for blocking a public roadway. Bressi remained
7 pulled over for several more minutes to argue with the deputy about the citation, ask for
8 names, badge numbers, and supervisors, and arguing with the original Border Patrol
9 agents. (SOF 63.)

10 • **September 17, 2013 (Bates #0240)**

11 Bressi arrives 40 seconds into the video. An agent instructs Bressi to roll down his
12 window. When Bressi refuses, the agent instructs Bressi to pull into the secondary
13 inspection area. Bressi refuses. The agents talks to his supervisor, then tells Bressi to leave
14 the checkpoint one minute and 23 seconds into the video. (SOF 64.)

15 • **April 30, 2014 (Bates #0263)**

16 The agent asks Bressi to state his citizenship. Bressi refuses to answer and asks the
17 agent to state his first name. The agent apparently places a spike strip in front of Bressi's
18 truck while Bressi honks and yells at the agent. Border Patrol agents brought over a
19 deputy, who attempted to have Bressi state his name. Bressi left the checkpoint four
20 minutes and 52 seconds into the video. Later, Bressi turns his cameras on again during a
21 traffic stop initiated by the deputy outside the boundaries of the checkpoint. (SOF 65.)

22 • **February 9, 2015 (Bates #0288)**

23 [The video produced by Bressi ends after five seconds.] (SOF 66.)

24 • **March 26, 2016 (Bates #0330)**

25 An agent asks Bressi whether he is a U.S. citizen. Bressi refuses to answer. One
26 minute and two seconds into the video, another agent instructs Bressi to move his vehicle
27 to the secondary inspection area. Bressi refuses to go over. An agent places a spike strip
28 in front of Bressi's vehicle, then Bressi honks his horn. Bressi continues to honk his horn

1 and argue with agents for several minutes. Nine minutes and ten seconds into the video, a
2 deputy arrives and tries to speak to Bressi. Twelve minutes and 45 seconds into the video,
3 Bressi is told he can leave the checkpoint, but the deputy instructed him to pull over past
4 the checkpoint. At sixteen minutes and 30 seconds into the video, the deputy initially cited
5 Bressi for littering but ultimately allowed him to leave with a warning. (*SOF 67.*)

6 • **April 10, 2017 (Bates #0383) – *Encounter at Issue in FTCA Claim***

7 Two minutes into the video, Bressi reaches the stop sign. (*SOF 68.*) Agent Taylor
8 Frye identified the purpose of the checkpoint and greeted Bressi. (*Id.*) When Bressi
9 declined to roll down his window and respond, Agent Frye instructed Bressi to drive into
10 the secondary inspection area. (*SOF 69.*) When Agent Frye called for assistance, Deputy
11 Pima County Sheriff Ryan Roher, who was already at the checkpoint to impound a
12 vehicle, came over. (*SOF 70.*) Deputy Roher told Bressi to follow Agent Frye's
13 instruction to pull into the secondary inspection area because he was holding up traffic.
14 (*SOF 71.*) Deputy Roher allowed Bressi to leave the checkpoint. (*SOF 72.*) But shortly
15 after Bressi left the checkpoint, Deputy Roher initiated a traffic stop. (*SOF 73.*)

16 As Deputy Roher interacted with Bressi, eventually placing him in handcuffs, two
17 Border Patrol agents—Agents Lopez and Fuente stood by. (*SOF 74.*) At one point, after
18 Deputy Roher instructed Bressi to sit down behind his truck, Bressi tried to stand up while
19 arguing with the agents. (*SOF 75.*) Agent Lopez approached Bressi and directed Bressi to
20 remain sitting, appearing to place his hands briefly on Bressi's shoulders. (*SOF 76.*)
21 Ultimately, Deputy Roher controlled the encounter. (*SOF 77.*) Deputy Roher called his
22 supervisor to the scene, at Bressi's request, and issued Bressi a citation for blocking a
23 public roadway. (*SOF 78.*)

24 • **July 14, 2017 (Bates #0399)**

25 The agent greets Bressi and asks him to state his citizenship. Bressi refuses to answer.
26 The agent speaks to his supervisor, and at one minute and 55 seconds, directs Bressi to
27 leave the checkpoint. Bressi remains at the checkpoint for 30 more seconds to yell at the
28 agents before leaving. (*SOF 79.*)

1 • **August 1, 2018 (Bates #3995)**

2 Bressi arrives 29 seconds into the video. The agent greets Bressi before Bressi asks
3 the agent whether he has assaulted anyone. The agent asks Bressi whether he is a U.S.
4 citizen. Bressi refuses to answer but presses his horn. Forty-six seconds into the video, the
5 agent tells Bressi he can leave the checkpoint. Bressi remains there for 20 seconds to yell
6 at the agent. (*SOF* 80.)

7 • **December 23, 2018 (Bates #3998)**

8 The agent asks Bressi to lower his window. Bressi refuses. The agent asks Bressi to
9 state his citizenship. Bressi refuses to answer. The agent continues to ask Bressi whether
10 he is a U.S. citizen until other agents working the checkpoint walk over to the vehicle and
11 look inside. One minute and 37 seconds into the video, agents tell Bressi to leave the
12 checkpoint. (*SOF* 81.)

13 • **May 15, 2019 (Bates #4001)**

14 The agent identifies the purpose of the checkpoint and asks Bressi to state his
15 citizenship. Bressi refuses to answer, argues with the agent, and presses his horn. One
16 minute and 22 seconds into the video, supervisors told the agent that the driver was Bressi
17 and that he should be waved through. At one minute and 32 seconds, the agent tells Bressi
18 he can leave the checkpoint. Bressi remains for a few seconds to yell at the agent. (*SOF*
19 82.)

20 **II. ARGUMENT**

21 **Summary Judgment Standard**

22 This Court should grant summary judgment on Bressi’s three claims against the
23 Federal Defendants. Summary judgment is the principal tool courts use to isolate
24 insufficient claims and prevent them from going to trial and consuming unwarranted
25 public and private resources. *Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). Courts
26 grant summary judgment when “there is no genuine dispute as to any material fact and the
27 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Of course, “the
28 mere existence of *some* alleged factual dispute between the parties will not defeat an

1 otherwise properly supported motion for summary judgment.” *Anderson v. Liberty Lobby,*
2 *Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original). The factual dispute must be
3 material. *Id.* at 248. The substantive law reveals whether a factual dispute is material. *Id.*

4 **Standard for Obtaining Injunctive Relief**

5 Two of Bressi’s claims against the Federal Defendants are for injunctive relief. To
6 obtain injunctive relief, a plaintiff must demonstrate standing. *See Steel Co. v. Citizens for*
7 *a Better Env.*, 523 U.S. 83, 102 (1998). Standing contains three requirements: First, a
8 plaintiff must allege an “injury in fact”—“a harm suffered by the plaintiff that is concrete
9 and actual or imminent, not conjectural or hypothetical.” *Id.* at 103 (internal quotation
10 marks omitted). Second, “there must be causation—a fairly traceable connection between
11 the plaintiff’s injury and the complained-of conduct of the defendants.” *Id.* Third, “there
12 must be redressability—a likelihood that the requested relief will redress the alleged
13 injury.” *Id.* Critical here will be the first and third requirements for standing.

14 Begin with the first requirement—“injury in fact.” When a plaintiff pursues
15 prospective relief, “[p]ast wrongs are not enough.” *Enrico’s Inc. v. Rice*, 730 F.2d 1250,
16 1253 (9th Cir. 1984). Rather, a plaintiff must show that he is “in danger of sustaining some
17 direct injury,” and that the “threat of injury” is “both ‘real and immediate,’ not
18 ‘conjectural’ or ‘hypothetical.’” *City of L.A. v. Lyons*, 461 U.S. 95, 101-02 (1983). The
19 plaintiff cannot rely on allegations about past events. After all, “[p]ast exposure to illegal
20 conduct does not in itself show a present case or controversy . . . if unaccompanied by any
21 continuing, present adverse effect.” *See id.* at 102.

22 It is especially important for a plaintiff to show a “likelihood of substantial and
23 immediate irreparable injury” when federalism or separation-of-powers principles are
24 concerned. *See Hodgers-Durgin v. de la Vina*, 199 F.3d 1037, 1043 (9th Cir. 1999). When
25 “a plaintiff seeks to enjoin the activity of a government agency,” the Ninth Circuit has
26 stressed, “his case must contend with the well-established rule that the Government has
27 traditionally been granted the widest latitude in the dispatch of its own internal affairs.”
28 *Id.* (internal quotation marks omitted). “In the absence of a likelihood of injury to the

1 named plaintiff[], there is no basis for granting injunctive relief that would restructure the
2 operations of the Border Patrol and that would require ongoing judicial supervision of an
3 agency normally, and properly, overseen by the executive branch.” *Id.* at 1044.

4 Now consider the third requirement for standing—“redressability.” To have standing,
5 the prospective relief sought by the plaintiff must “remedy the injury suffered.” *Steel Co.*,
6 523 U.S. at 107. It must “serve to reimburse” the plaintiff or “to eliminate any effects” of
7 the defendants’ illegal conduct. *See id.* at 105-06. It is not sufficient for purposes of Article
8 III if a plaintiff’s claim for injunctive relief is merely “aimed at deterring” the defendant
9 from future illegal conduct. *Id.* at 108. If “[n]othing supports the requested injunctive relief
10 except [the plaintiff’s] generalized interest in deterrence,” no case or controversy exists.
11 *See id.* at 108-09.

12 Moreover, because injunctive relief is an “extraordinary remedy,” when issued, it
13 “must be tailored to remedy the specific harm alleged.” *McCormack v. Hiedeman*, 694
14 F.3d 1004, 1019 (9th Cir. 2012). Indeed, the terms of an injunction must be stated
15 specifically, describing “in reasonable detail—and not by referring to the complaint or
16 other documents—the act or acts restrained or required.” *See Fed. R. Civ. P.* 65(d)(1)(B)
17 and (C). These “are no mere technical requirements.” *Fortyune v. Am. Multi-Cinema Inc.*,
18 364 F.3d 1075, 1087 (9th Cir. 2004) (quoting *Schmidt v. Lessard*, 414 U.S. 473, 476
19 (1974)). The specificity requirements serve “to prevent uncertainty and confusion on the
20 part of those faced with injunctive orders, and to avoid the possible founding of a contempt
21 citation on a degree too vague to be understood.” *Id.*

22 **A. This Court should grant summary judgment on Bressi’s claim that the State**
23 **Route 86 checkpoint violates the Fourth Amendment.**

24 This Court should grant summary judgment on Bressi’s claim in Count 2—his claim
25 that the State Route 86 checkpoint violates the Fourth Amendment—because the
26 checkpoint is lawful under *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) and
27 because it has immigration as its primary purpose.

28

1 **1. Border Patrol’s immigration checkpoint on State Route 86 is a**
2 **lawful checkpoint under *United States v. Martinez-Fuerte*, 428 U.S.**
3 **543 (1976).**

4 In 1976, the Supreme Court held that permanent Border Patrol checkpoints— like the
5 one on State Route 86—are constitutional. *See United States v. Martinez-Fuerte*, 428 U.S.
6 543, 553 (1976) (describing the Border Patrol’s criteria for establishing permanent
7 immigration checkpoints). Although checkpoint stops are “seizures” within the meaning
8 of the Fourth Amendment, Border Patrol’s checkpoints are “necessary because the flow
9 of illegal aliens cannot be controlled effectively at the border.” *Id.* at 556. Without the
10 checkpoints, “illegal aliens [would have] a quick and safe route into the interiors.” *Id.* at
11 556-57.

12 “While the need to make routine checkpoint stops is great,” the Court reasoned, “the
13 consequent intrusion on Fourth Amendment interests is quite limited.” *Id.* at 557. After
14 all, checkpoint stops only require a “vehicle’s occupants to respond to a brief question or
15 two,” and neither the vehicle nor its occupants are searched. *Id.* at 558. The agents “visual
16 inspection of the vehicle is limited to what can be seen without a search.” *Id.* Moreover,
17 unlike stops during roving patrols, at checkpoints “the motorist can see that other vehicles
18 are being stopped, he can see visible signs of the officers’ authority, and he is much less
19 likely to be frightened or annoyed by the intrusion.” *Id.* (quoting *U.S. v. Ortiz*, 422 U.S.
20 891, 895 (1975)). When the checkpoints are permanent, motorists “using these highways
21 are not taken by surprise as they know . . . the location of the checkpoints.” *Id.* at 559. And
22 the checkpoints “involve less discretionary enforcement activity” because the location “is
23 not chosen by officers in the field, but by officials responsible for making overall decisions
24 as to the most effective allocation of limited enforcement resources.” *Id.*

25 Thus, consistent with the Fourth Amendment, Border Patrol can stop and question
26 motorists at reasonably located checkpoints “in the absence of any individualized
27 suspicion.” *Id.* at 562. Border Patrol agents also have “wide discretion” to “refer motorists
28 selectively to the secondary inspection area.” *Id.* at 563-64; *see also U.S. v. Sanders*, 937

1 F.2d 1495, 1499 (10th Cir. 1991) (“No individualized suspicion is necessary to . . .
2 selectively refer motorists to secondary inspection checkpoint.”).

3 The reasoning that the Court used to conclude that the permanent Border Patrol
4 checkpoint in *Martinez-Fuerte* was constitutional applies equally here. The evidence in
5 the records demonstrates, first, that “the flow of illegal aliens cannot be controlled
6 effectively at the border” without permanent checkpoints. *Id.* at 556. Before Border Patrol
7 placed three checkpoints within Tucson Station, Border Patrol saw an increase in
8 smuggling activities. (*SOF* 9.) It was too easy for immigrants and smugglers to cross the
9 border illegally, then jump right into a vehicle and drive further into the United States.
10 The State Route 86 checkpoint has worked to deter immigrants and smugglers from
11 crossing illegally into the Tohono O’odham Nation and getting into a vehicle to drive
12 toward metro Tucson. (*SOF* 17.)

13 The record also demonstrates, second, that checkpoint stops generally only require a
14 “vehicle’s occupants to respond to a brief question or two,” and neither the vehicle nor its
15 occupants are searched. *Martinez-Fuerte*, 428 U.S. at 558. Following official policy and
16 training, a Border Patrol agent takes a quick look into the plain view areas of a vehicle
17 and asks brief questions about citizenship, then decides quickly whether to send the
18 vehicle along or refer it to the secondary inspection area. (*SOF* 27, 28.) Moreover, the
19 record shows, third, that like the drivers approaching the checkpoint at issue in *Martinez-*
20 *Fuerte*, drivers approaching the State Route 86 checkpoint “can see that other vehicles are
21 being stopped” and “can see visible signs of the officers’ authority.” *Martinez-Fuerte*, 428
22 U.S. at 558. The checkpoint is preceded by speed limit signs and rumble strips, marked
23 with signs and brightly colored barriers, and staffed by uniformed Border Patrol agents.
24 (*SOF* 2, 3.) Finally, the record shows, fourth, motorists using State Route 86 “are not taken
25 by surprise,” and the checkpoint “is not chosen by officers in the field, but by officials
26 responsible for making overall decisions as to the most effective allocation of limited
27 enforcement resources.” *See Martinez-Fuerte*, 428 U.S. at 559. Like the checkpoint at
28

1 issue in *Martinez-Fuerte*, the State Route 86 checkpoint is permanent. (*SOF* 8.) For those
2 reasons, the State Route 86 checkpoint is authorized under *Martinez-Fuerte*.

3 **2. The primary purpose of the State Route 86 checkpoint is**
4 **immigration—just like the other Border Patrol immigration**
5 **checkpoints in Arizona that this Court has upheld.**

6 Despite *Martinez-Fuerte*, many criminal defendants, emboldened by the Supreme
7 Court's decision in *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000), a case that does
8 not concern a Border Patrol checkpoint, have argued that Border Patrol's immigration
9 checkpoints are improper general crime checkpoints—in other words, that these Border
10 Patrol checkpoints do not have immigration enforcement as their primary purpose. This
11 Court has consistently rejected those challenges, including a challenge to this exact
12 checkpoint. *See U.S. v. Brown*, 2017 WL 6403069, *6 (D. Ariz. Oct. 4, 2017) *report and*
13 *recommendation adopted by U.S. v. Brown*, 2017 WL 6381424 (D. Ariz. Dec. 14, 2017)
14 (rejecting a challenge to the State Route 86 checkpoint and noting its agreement with three
15 other District of Arizona cases). In concluding that Border Patrol's permanent checkpoints
16 in Arizona have immigration as their primary purpose, this Court has stressed (1) the
17 expressly stated purpose of the checkpoints; (2) the questions that are asked to motorists;
18 (3) the role of the checkpoints in Border Patrol's integrated approach to border security;
19 and (4) the success of the checkpoints. *See U.S. v. Ruiz-Hernandez*, 2017 WL 1047236,
20 *9 (D. Ariz. March 17, 2017); *Brown*, 2017 WL 6403069 at *6. Those factors are all
21 present here.

22 First, the express purpose of the checkpoints is to deter and detect illegal immigration.
23 Second, according to official Border Patrol policy and Border Patrol training, agents are
24 supposed to greet motorists, tell them that the agents is conducting an immigration
25 inspection, and ask questions aimed at the vehicle occupant's citizenship. Indeed, even in
26 the Border Patrol encounters identified by Bressi as alleged First Amendment violations,
27 agents are seen greeting Mr. Bressi, telling him that they are conducting an immigration
28 inspection, and asking him a question about his citizenship. Third, the evidence shows
how the State Route 86 checkpoint fits into Border Patrol's broader mission. It is

1 positioned to the east of the Tohono O’odham Nation, where illegal aliens come through
2 the border. The State Route 86 checkpoint, along with two other checkpoints in the Tucson
3 Station, are necessary to restrict the major routes of egress from the U.S.-Mexico border
4 to the Tucson metro area. Those three checkpoints deter illegal immigration, and they
5 force illegal border crossers to remain on foot longer, making it easier for Border Patrol
6 to apprehend them before they get in vehicles. Finally, Agent Teran and a Border Patrol
7 report show that public roadways have become safer since the three border patrol
8 checkpoints came into existence. Thus, the State Route 86 checkpoint has immigration as
9 its primary purpose.

10 * * *

11 Because the State Route 86 checkpoint is necessary to serve an important government
12 and imposes only a limited instruction on the Fourth Amendment interests of passengers,
13 and because it has immigration as its primary purpose, the State Route 86 checkpoint does
14 not violate the Fourth Amendment. This Court should grant summary judgment on
15 Bressi’s claim.

16 **B. This Court should grant summary judgment on Bressi’s claim that Border**
17 **Patrol agents violate the First Amendment at the checkpoint.**

18 This Court should grant summary judgment on Bressi’s claim that Border Patrol
19 agents violate the First Amendment at the checkpoint. Bressi’s claim fails because the
20 First Amendment is not implicated, and the evidence does not show that Bressi’s
21 prolonged encounters at the checkpoint are the result of recurring constitutional violations.

22 **1. The First Amendment is not implicated here—the Fourth**
23 **Amendment governs both the questions an agent can ask during a**
24 **legal seizure and the reasonableness of actions an agent takes based**
on a person’s answer or non-answer.

25 To begin, the First Amendment is not implicated here. Bressi’s theory is that he has a
26 First Amendment right to not answer the citizenship question. In the context of a legal
27 seizure, however, so long as law-enforcement officers ask questions related to the basis
28 for their seizure, the Fourth Amendment governs—not the First Amendment. Courts have

1 traditionally analyzed the reasonableness of questions asked by law-enforcement during
2 legal seizures under the Fourth Amendment. *See e.g. Hiibel v. Sixth Judicial Dist. Ct. of*
3 *Nev.*, 542 U.S. 177, 185-86 (2004) (analyzing the reasonableness of questions about a
4 suspect identify during a *Terry* stop under the Fourth Amendment). This is true in
5 immigration checkpoint cases, where courts have held that Border Patrol agents may ask
6 questions aimed at discovering the citizenship of the motorists arriving at the checkpoint.
7 *See e.g. U.S. v. Muchaca-Barrera*, 261 F.3d 425, 433-34 (5th Cir. 2001).

8 Whether it is reasonable for a law-enforcement officer to prolong a seizure, conduct
9 a search, or make an arrest made based on a person's answer or non-answer to a question
10 is also a Fourth Amendment inquiry. *See e.g. U.S. v. Pulido*, 2015 WL 5692843, *3-4
11 (S.D. Tex. Sept. 28, 2015) (analyzing a search based in part on a motorists refusal to
12 answer the citizenship question at a Border Patrol checkpoint under the Fourth
13 Amendment); *Rynearson v. U.S.*, 2013 WL 11309337, *11 (W.D. Tex. June 27, 2013)
14 *report and recommendation adopted in Rynearson v. U.S.*, 2013 WL 11309342 (W.D.
15 Tex. Sept. 30, 2013) (concluding that a motorists refusal to roll down his window and
16 answer questions at a Border Patrol checkpoint gave agents reasonable suspicion to hold
17 him). Indeed, courts have rejected the argument that the First Amendment is implicated
18 during questioning by law-enforcement officers during a reasonable seizure. *See*
19 *Alexander v. City of Round Rock*, 854 F.3d 298, 308-09 (5th Cir. 2017) (finding no case
20 to support plaintiff's contention that he had a First Amendment right to not answer
21 questions during a traffic stop); *Koch v. City of Del City*, 660 F.3d 1228, 1244 (10th Cir.
22 2011) (concluding that there was no clearly established First Amendment right to not
23 answer police questions during a *Terry* stop). Thus, the First Amendment is not
24 implicated.

25 **2. Bressi has not produced evidence that his First Amendment rights**
26 **are violated at the checkpoint or that he is entitled to injunctive**
relief to remedy recurring First Amendment violations.

27 Even if one believes that Bressi has a First Amendment right to not say whether he is
28 a U.S. citizen, he still has not produced evidence that would entitle him to injunctive relief

1 to remedy a recurring constitutional violation. Again, Bressi's theory is that, when he is
2 detained at the State Route 86 checkpoint, Border Patrol agents are compelling speech
3 from him. But when asked to identify examples that, in Bressi's view, showed agents
4 detaining him to compel speech, Bressi pointed to only 18 incidents out of the 555
5 encounters with Border Patrol he has on video—only 3.24% of his checkpoint encounters.

6 Even those 18 videos, however, do not support Bressi's claims that Border Patrol
7 agents are detaining him merely to compel speech. The videos largely show Border Patrol
8 agents following *Martinez-Fuerte* and official policy. In 12 of those encounters, Border
9 Patrol agents can be seen greeting Bressi, identifying the purpose of the checkpoint as
10 immigration, and asking him to state his citizenship (April 14, 2005; March 3, 2008; April
11 22, 2008; November 26, 2008; December 20, 2008; September 2, 2011; April 30, 2014;
12 March 26, 2016; April 10, 2017; August 1, 2018; December 23, 2018; May 15, 2019).

13 Moreover, in eight of the encounters, Border Patrol agents instructed Bressi to drive
14 into the secondary inspection area within a minute or less into their interactions with
15 him—instructions that he refused to comply with (April 14, 2005; April 22, 2008;
16 November 26, 2008; September 25, 2011; March 29, 2013; September 17, 2013; March
17 26, 2016; April 10, 2017). In 8 of the videos, Bressi himself deliberately prolongs the
18 encounter by remaining at the checkpoint after he has been waved through to continue
19 yelling at the agents (April 14, 2005; April 22, 2008; December 20, 2008; September 2,
20 2011; September 25, 2011; July 14, 2017; August 1, 2018; May 15, 2019).

21 Whatever one thinks about the supposed First Amendment right not to answer the
22 citizenship question, Bressi has no First Amendment right to refuse to pull over into the
23 secondary inspection area. A deliberate decision to disobey a lawful police order is not
24 speech. *See Young v. Cnty. of Los Angeles*, 655 F.3d 1156, 1170 (9th Cir. 2011) (holding
25 that the plaintiff's refusal to obey a police officer's lawful instructions "was not an act of
26 speech protected by the First Amendment"). Border Patrol agents can lawfully refer any
27 vehicle coming through the checkpoint to the secondary inspection area. So when Bressi
28

1 is ordered to drive to the secondary inspection area, and he refuses, he cannot hide behind
2 the First Amendment.

3 Despite the contentious nature of these 18 encounters identified by Bressi as alleged
4 First Amendment violations, only four of the encounters lasted more than a matter of
5 minutes—the encounters on September 25, 2011; March 29, 2013; March 26, 2016; April
6 10, 2017. Those four encounters—out of 555—are extremely rare given the frequency that
7 Bressi drives through the checkpoint, and the last prolonged encounter was over four years
8 ago. Moreover, in each of those four encounters, Bressi’s non-compliance goes beyond
9 simply refusing to state that he is a U.S. citizen. In the September 25, 2011, March 26,
10 2016, and April 10, 2017 encounters, Bressi refused lawful orders to drive into the
11 secondary inspection area early in the encounter. On March 29, 2013, Bressi both left the
12 checkpoint before being allowed to leave *and* refused to drive into the secondary
13 inspection area. Thus, the evidence does not support Bressi’s contention that, in these 18
14 encounters, Border Patrol agents are detaining him merely to compel speech from him.

15 The vast majority of the encounters go smoothly, and in the rare occasion where one
16 of Bressi’s encounters lasted more than a few minutes, it is because he is refusing lawful
17 orders. Thus, even if this Court concludes that Border Patrol violated the Constitution in
18 one or a couple of these encounters, it should still grant summary judgment. Bressi’s claim
19 is one for injunctive relief, and to obtain injunctive relief, Bressi must demonstrate that a
20 “substantial and immediate irreparable injury” is likely to occur. *See Hodgers-Durgin*,
21 199 F.3d at 1043. One or two instances from several years ago, when Bressi has driven
22 through the checkpoint 555 times and has not had a prolonged encounter at the checkpoint
23 in over four years, does not warrant this Court’s intervention into Border Patrol’s
24 operations.

25 * * *

26 Because the First Amendment is not implicated, and because Bressi’s videos do not
27 demonstrate that his constitutional rights are being routinely violated, this Court should
28 grant summary judgment on his First Amendment claim in Count 1.

1 **C. This Court should grant summary judgment on Bressi’s claim for false**
2 **imprisonment under the Federal Tort Claims Act.**

3 **1. Bressi’s Federal Tort Claims Act claim is barred by the discretionary-**
4 **function exception.**

5 This Court should grant summary judgment on Bressi’s claim for false imprisonment
6 —his claim in Count 8 under the Federal Tort Claims Act. The United States is a
7 sovereign; it is therefore “immune from suit unless it has expressly waived such immunity
8 and consented to be sued.” *Dunn & Black P.S. v. U.S.*, 492 F.3d 1084, 1087-88 (9th Cir.
9 2007) (quoting *Gilbert v. DaGrossa*, 756 F.2d 1455, 1458 (9th Cir. 1985)). Courts lack
10 jurisdiction over claims against the United States where the United States has not
11 explicitly waived its sovereign immunity. *U.S. v. White Mt. Apache Tribe*, 537 U.S. 465,
12 472 (2003). Waivers of sovereign immunity should be strictly construed in favor of the
13 sovereign. *Vacek v. U.S. Postal Serv.*, 447 F.3d 1248, 1250 (9th Cir. 2006).

14 The Federal Tort Claims Act waiver of sovereign immunity is subject to several
15 exceptions, including the “discretionary function exception.” See 28 U.S.C. § 2680. The
16 discretionary-function exception clarifies that federal courts lack jurisdiction over claims
17 based on “the exercise or performance or the failure to exercise or perform a discretionary
18 function or duty on the part of a federal agency or an employee of the Government,
19 whether or not the discretion involved be abused.” 28 U.S.C. § 2680(a).

20 Courts “use a two-step analysis to determine whether challenged conduct falls under
21 the discretionary function exception.” *Sabow v. U.S.*, 93 U.S. 1445, 1451 (9th Cir. 1996).
22 The first step calls on courts to consider “whether the challenged actions involve ‘an
23 element of judgment or choice.’” *Id.* (quoting *Gaubert*, 499 U.S. at 315). This
24 requirement—the “discretionary act” requirement—means the United States is not
25 protected from liability “if ‘a federal statute, regulation, or policy specifically prescribes
26 a course of action for an employee to follow.’” *Id.* (quoting *Berkovitz v. U.S.*, 486 U.S. 531,
27 536 (1988)). If the challenged actions are discretionary, courts proceed to the second step
28 of the analysis—they consider whether the federal employee’s “judgment involves
considerations of social, economic, or political policy.” *Id.*

1 In general, acts of law enforcement agents, like the Border Patrol agents' acts here,
2 involve discretionary acts. For Border Patrol agents, 8 U.S.C. § 1357(a)(5) grants them
3 power to make arrests. Several federal regulations clarify that power. Specifically, 8
4 C.F.R. § 287.5(b) authorizes Border Patrol agents to patrol the border, and subsections
5 (c)(3) and (c)(4) authorize them to make arrests. Moreover, both Border Patrol's policy
6 on checkpoint operations and its guidance on non-compliant motorists authorize Border
7 Patrol agents to request assistance from local law-enforcement agencies. (*SOF* 34.)
8 Neither the federal statute, nor the relevant regulations, nor any policies produced in this
9 case contain a mandatory provision that a Border Patrol agent violated. To be sure, courts
10 have routinely held that decisions made by law-enforcement officers during an
11 investigation are discretionary in nature. *See Sabow*, 93 F.3d at 1452 (holding that
12 guidelines "were meant to be followed at the discretion of [the] investigating officers in
13 light of the specific circumstances surrounding a particular investigation"); *Artega-Ruiz*
14 *v. U.S.*, 164 F.Supp.3d 1198, 1203-04 (D. Idaho 2016) (holding that "the ICE agents'
15 decision [to remove the plaintiff] was a matter of judgment"); *Casillas v. U.S.*, 2009 WL
16 735193, *12 (D. Ariz. Feb. 11, 2009) (holding that "the choices that [the agent] made in
17 carrying out the investigation . . . were necessarily based on her judgment"); *Mesa v. U.S.*,
18 837 F.Supp. 1210, 1213 (S.D. Fla. 1993) ("The overwhelming consensus of federal case
19 law establishes that criminal law enforcement decisions . . . are discretionary in
20 nature . . .").

21 Further, during an investigation, law-enforcement agents' "judgment involves
22 considerations of social, economic, or political policy." *See Sabow*, 93 F.3d at 1451. By
23 conducting an immigration inspection at the checkpoint, Agent Frye was promoting the
24 public policy of stopping illegal immigrants before they entered the United States. Agent
25 Frye's acts during his encounter with Bressi—asking him to state his citizenship; ordering
26 him to the secondary inspection area; and reaching out to Deputy Roher for assistance—
27 amount to policy decisions. Indeed, choices made by law-enforcement officers throughout
28 an investigation necessarily involve considerations of social, economic, or political policy.

1 *See id.* at 1453 (“Investigations by federal law enforcement officials, . . . clearly require
2 investigative officers to consider relevant political and social circumstances . . .”);
3 *Arteaga-Ruiz*, 164 F.Supp.3d at 1204 (holding that the officers’ decision “charging
4 Arteaga-Ruiz were susceptible to policy analysis”); *Casillas*, 2009 WL 735193, at *13
5 (holding that the agent’s “decision ‘involve[d] a judgment and a choice grounded in policy
6 considerations”).

7 Because Agent Frye’s actions during the encounter with Bressi on April 10, 2017, are
8 discretionary and susceptible to policy analysis, Bressi’s FTCA claim is barred by the
9 discretionary-function exception.

10 **2. Bressi has produced no evidence that a United States employee**
11 **detained him without lawful authority.**

12 Even if this Court declines to grant summary judgment based on the discretionary-
13 function exception, it should grant summary judgment. To begin, Bressi’s FTCA claim
14 must be based on the acts of the Border Patrol agents—not the Deputy Pima County
15 Sheriff. After all, the Federal Tort Claims Act authorizes private tort actions against the
16 United States “for money damages . . . or personal injury or death caused by the negligent
17 or wrongful act or omission *of any employee of the Government while acting within the*
18 *scope of his office or employment.*” 28 U.S.C. § 1346(b)(1) (emphasis added). An
19 “employee of the Government” is an officer or employee “of any federal agency . . . and
20 persons acting on behalf of a federal agency in an official capacity, . . . in the service of
21 the United States.” 28 U.S.C. § 2671.

22 But Bressi produced no evidence that the Border Patrol agents would be liable for
23 false imprisonment under Arizona law. *Liebsack v. U.S.*, 731 F.3d 850, 856 (9th Cir. 2013)
24 (noting that state law provides the substantive law in FTCA claims). In Arizona, false
25 imprisonment is “the detention of a person without his consent and without lawful
26 authority.” *Cullison v. City of Peoria*, 120 Ariz. 165, 169 (1978). The undisputed facts
27 show that Border Patrol agents never lacked lawful authority during their own brief
28 detention of Bressi. The initial stop at the checkpoint was a lawful suspicionless stop at

1 an immigration checkpoint. *See Martinez-Fuerte*, 428 U.S. at 562. Agent Frye also had
2 legal authority to order Bressi to the secondary inspection area. *See Sanders*, 937 F.2d at
3 1499. When Bressi refused to drive to the secondary inspection area, Agent Frye had
4 reasonable suspicion to prolong the seizure because Bressi was blocking a public roadway.
5 Agent Frye could enlist the help of a local law-enforcement agent, who was already at the
6 checkpoint for another call because blocking a public roadway is a state offense. *See*
7 A.R.S. § 13-2906(A)(1). After Deputy Roher took control, it was Deputy Roher’s decision
8 to initiate a traffic stop and arrest Bressi, placing him in handcuffs until a supervisor
9 arrived and until Deputy Roher could issue a citation. The United States cannot be sued
10 for Deputy Roher’s decisions because Deputy Roher is not a United States employee and
11 he was not acting in the service of the United States. *See* 28 U.S.C. §§ 1346(b)(1), 2671.

12 Even if the United States could be sued for Deputy Roher’s decisions, however, this
13 Court should still grant summary judgment because Deputy Roher had probable cause to
14 arrest Bressi. A law-enforcement officer “has probable cause to arrest a suspect without a
15 warrant if the available facts suggest a ‘fair probability’ that the suspect has committed a
16 crime.” *Tatum v. City and Cnty. of San Francisco*, 441 F.3d 1090, 1094 (9th Cir. 2006).

17 Given what Deputy Roher witnessed, which is all recorded on video, the facts
18 available to him “suggest[ed] a ‘fair probability’ that [Bressi] ha[d] committed a crime.”
19 *See id.* The Fourth Amendment does not require that officers have proof of the suspect’s
20 guilt beyond a reasonable doubt before making a warrantless arrest. *Maryland v. Pringle*,
21 540 U.S. 366, 371 (2003) (quoting *Illinois v. Gates*, 462 U.S. 213, 235 (1983)). Officers
22 only need a “reasonable ground for belief of guilt,” a belief “particularized with respect to
23 the person to be [arrested].” *Id.*

24 In Arizona, a person is guilty of obstructing a highway or other public thoroughfare,
25 a class 3 misdemeanor, when the person, “[h]aving no legal privilege to do so, recklessly
26 interferes with the passage of any highway or public thoroughfare by creating an
27 unreasonable inconvenience or hazard.” A.R.S. § 13-2906(A)(1). Here, Deputy Roher saw
28 Bressi repeatedly ignore a lawful order by a Border Patrol agent to drive out of the primary

1 lane of travel into the secondary inspection area. In doing so, Bressi “creat[ed] an
2 unreasonable inconvenience” for the people behind him, blocking their ability to proceed
3 through the checkpoint and continue east on State Route 86. *See id.* Thus, even if Bressi
4 could bring a Federal Tort Claims Act claim based on Deputy Roher’s decision, this Court
5 should still grant summary judgment.

6 **III. CONCLUSION**

7 For the foregoing reasons, this Court should grant summary judgment on Bressi’s
8 claims against the Federal Defendants—his claims in Count 1 and 2 for injunctive relief,
9 and his claim for damages in Count 8.

10

11 Respectfully submitted on June 17, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2021, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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