

1 Ralph E. Ellinwood  
2 Ralph E. Ellinwood,  
3 Attorney at Law, PLLC  
4 SBA: 3890  
5 PO Box 40158  
6 Tucson, AZ 85717  
7 Phone: (520) 413-2323  
8 Fax: (855) 817-6636  
9 [ree@yourbestdefense.com](mailto:ree@yourbestdefense.com)

11 Amy P. Knight  
12 Knight Law Firm, PC  
13 SBA: 31374  
14 3849 E Broadway Blvd, #288  
15 Tucson, AZ 85716-5407  
16 Phone: 520 878-8849  
17 [amy@amyknightlaw.com](mailto:amy@amyknightlaw.com)

18  
19 IN THE UNITED STATES DISTRICT COURT  
20  
21 IN AND FOR THE DISTRICT OF ARIZONA  
22

Terrence Bressi,

Plaintiff,

vs.

(1) Pima County Sheriff Mark  
Napier, in his individual and official  
capacities, *et al.*,

Defendants.

Case No. 4:18-cv-00186 DCB

STATEMENT  
OF UNDISPUTED  
MATERIAL FACTS

23  
24 **STATEMENT OF UNDISPUTED MATERIAL FACTS**  
25

26 1. The United States Border Patrol has continuously operated a traffic  
27 checkpoint on SR-86 at milepost 146.5 since 2010. (Fed. Answer, ¶ 2 [Doc 55]).

28 2. The Border Patrol now considers the SR-86 checkpoint to be a  
29 permanent checkpoint, and it is staffed at all times. (**Ex. 1:** BP Depo, pp. 20-21, 30).

1            Location

2  
3            3.        The United States Border Patrol has no documentation of how the  
4 location of the SR-86 checkpoint was selected and does not know who selected the  
5 location or how the location was chosen (**Ex. 1:** BP Depo, pp.9-10, 27-29). The only  
6 documentation the Border Patrol has discussing the SR-86 checkpoint’s location is a  
7 memo dated 2016. (**Ex. 20:** Tucson Sector Checkpoint Memo dated 2016)

8            4.        The Border Patrol does not keep track of how many vehicles pass  
9 through the checkpoint each day. (**Ex. 1:** BP Depo, p. 50)

10           5.        SR-86 is an east-west road that at no point intersects the US-Mexico  
11 Border. (**Ex. 1:** BP Depo, pp. 30-31)

12           6.        The United States Border Patrol operates checkpoints on all three north-  
13 south roads leading to the border intersected by SR-86: SR 85, SR 286, and I-19 (**Ex.**  
14 **1:** BP Depo, p. 31).

15           7.        SR-86 is the main route by which individuals can travel between  
16 Tucson and the Kitt Peak National Observatory. (**Ex. 1:** BP Depo, p. 17).

17           Purpose and Effectiveness

18  
19           8.        The United States Border Patrol states on its public website, “Traffic  
20 checks are conducted on major highways leading away from the border to (1) detect  
21 and apprehend illegal aliens attempting to travel further into the interior of the United  
22 States after evading detection at the border and (2) to detect illegal narcotics.” (**Ex.**  
23 **2:** printout from <https://www.cbp.gov/border-security/along-us-borders/overview>)

1           9.     The United States Border Patrol has represented to the Arizona  
2 Department of Transportation, in seeking an encroachment permit, that one main  
3 purpose of the SR-86 checkpoint is deterring narcotics smuggling. (**Ex. 3:** USA 0059;  
4 USA 310-315)

5           10.    For the four years for which the Border Patrol has provided statistics,  
6 the number of immigration-related vs. narcotics-related arrests (individual people),  
7 and the number of immigration-related vs. narcotics-related events (encounters,  
8 which could yield multiple arrests) and total arrests (including immigration, narcotics,  
9 and other non-immigration) at the SR-86 checkpoint are as follows: (**Ex. 4:** Stats)

	ARRESTS		EVENTS		TOTAL ARRESTS
	Immigration	Narcotics	Immigration	Narcotics	
FY2017	8	26	4	43	74
FY2018	81	55	25	33	174
FY2019	51	36	19	27	121
FY2020	117	36	35	35	172

11  
12           11.    The United States Border Patrol does not routinely track the numbers  
13 of immigration vs. narcotics-related events and arrests, but rather produces counts of  
14 these events when required in litigation. (**Ex. 1:** BP Depo, p. 26 (Agent Teran does  
15 not know how many concealed non-citizens have been detected); BP Depo, p. 60)

16           12.    Customs and Border Protection publishes yearly enforcement statistics  
17 on its website. It reports statistics for various types of encounters and enforcement  
18 actions, arrests of undocumented people with criminal records, gang affiliated  
19 enforcement, and drug seizures ([https://www.cbp.gov/newsroom/stats/cbp-](https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics)  
20 [enforcement-statistics](https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics)) as well as more detailed demographic information for

1 undocumented people apprehended in the Southwest border region  
2 ([https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-](https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-component)  
3 [component](https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-component)). Out of all this published data, the only report on checkpoints is in the  
4 “drug seizures” section, where the agency reports “Monthly U.S. Border Patrol  
5 Nationwide Checkpoint Drug Seizures.” (**Ex. 5:** Statistical printout of monthly  
6 report)

7 13. All Border Patrol agents are cross-designated with so-called “Title 21  
8 authority,” which includes the power to enforce federal criminal laws pertaining to  
9 narcotics. (**Ex. 6:** Fed. Response to RFP No.6; **Ex. 7:** Memorandum of Understanding  
10 Between BP and DEA)

#### 11 Detection Methods

12 14. Agents at the SR-86 checkpoint routinely use trained canines, a  
13 backscatter X-ray device, and personal radiation detectors to inspect vehicles. (**Ex. 1:**  
14 BP Depo, pp. 79-80)

15 15. Some agents at the SR-86 checkpoint have access to databases that  
16 contain identification and criminal history information (**Ex. 1:** BP Depo, pp. 65-66,  
17 71; **Ex. 6:** Fed. Response to Interrogatory No. 5). While agents are trained on using  
18 the databases, the agency does not have specific rules or criteria independent of the  
19 general rules concerning access to each database for when agents at the SR-86  
20 checkpoint may access these databases. (**Ex. 1:** BP Depo, p. 73)  
21

1           16.     The canines used at the SR-86 checkpoint are trained to detect narcotics  
2 and concealed humans (**Ex. 1:** BP Depo, pp. 35-36; **Ex. 6:** Fed. Response to  
3 Interrogatory No. 2).

4           17.     Canines are regularly used in the area of the checkpoint known as “pre-  
5 primary,” before a driver has an initial encounter with any agents. (**Ex. 1:** BP Depo,  
6 p. 35)

7           18.     The Border Patrol does not know how many times, if ever, the use of  
8 canines at the SR-86 checkpoint has led to the discovery of concealed humans. (**Ex.**  
9 **1:** BP Depo, p. 49)

10          19.     The Border Patrol operated a pilot program for several months where it  
11 installed agency-owned automatic license plate readers at the SR-86 checkpoint. (**Ex.**  
12 **1:** BP Depo, p. 32).

13          20.     Drug Enforcement Agency-owned license plate readers operate in the  
14 immediate vicinity of, but outside what the agency considers to be the official  
15 footprint of, the checkpoint. (**Ex. 1:** BP Depo, pp. 22-23; **Ex. 6:** Fed. Response to  
16 Interrogatory No. 4). The Border Patrol has acknowledged the presence of this system  
17 in its application for an encroachment permit for the checkpoint. (**Ex. 3:** USA-0059)  
18 (also cited above).

19           Operation  
20

21          21.     It is the Border Patrol’s policy not to exempt any vehicle, including  
22 those of known local commuters or residents, from inspection at the SR-86

1 checkpoint. They do not “wave through” individuals known to them whom they know  
2 to be U.S. citizens. (**Ex. 1:** BP Depo, p. 79)

3       22. Each car passing through the checkpoint enters an area known as  
4 “primary inspection,” where it is required to stop and a Border Patrol agent asks the  
5 occupants if they are United States citizens and conducts an “open view” inspection  
6 of the vehicle. (**Ex. 8:** Academy Instructor Guide (traffic check), p. 13)

7       23. During this initial encounter, agents are trained to look both for signs  
8 that the occupants may not be United States citizens or authorized to be present, and  
9 for indications of federal criminal activity of any kind. (**Ex. 9:** Academy Student and  
10 Instructor Traffic Check Slide 18; **Ex. 10:** Field Training Instructor Guide, p. 10.1.1-  
11 5 (USA-02270)) (“the basis of a primary checkpoint inspection is the decision to  
12 allow individuals to proceed or refer them to secondary inspection” based on  
13 “immigration purposes,” “Title 21 authority in conjunction with reasonable  
14 suspicion” or “[r]easonable suspicion for any federal crime and state violations in  
15 some jurisdictions.”).

16       24. Agents have discretion of whether to direct any vehicle passing through  
17 the checkpoint to a secondary inspection area. (**Ex. 1:** BP Depo, pp. 77-78)

18       25. Agents may refer a vehicle to a secondary inspection area because the  
19 agent has reasonable suspicion that the occupant is engaged in non-immigration-  
20 related criminal activity. (**Ex. 9:** Academy Student and Instructor Traffic Check Slide  
21 18); **Ex. 8:** Instructor Guide Lesson 3, pp. 1-13 (USA 0418); **Ex. 10:** Field Training  
22 Instructor Guide, p. 10.1.1-4 (USA-02269) (emphasizing secondary referral is

1 appropriate based on Title 21 authority or “[r]easonable suspicion for any federal  
2 crime and state violations in some jurisdictions”).

3 26. Agents sometimes detain individuals passing through the checkpoint,  
4 including directing them to the secondary inspection area, not for immigration  
5 reasons, but at the request of other law enforcement agencies who do not enforce  
6 immigration laws. (**Ex. 11:** PCSD reports, 10/30/13 (2 reports), 11/13/13, 11/14/13,  
7 11/26/13 (2 reports), 1/17/14, 2/25/14 (2 reports), 5/29/14, 10/5/15, 4/6/16, 3/20/17,  
8 4/10/17).

9 27. It is the policy of the United States Border Patrol to detain individuals  
10 passing through the checkpoint until they have determined their citizenship. (**Ex. 1:**  
11 BP Depo, p. 84)

12 Terrence Bressi  
13

14 28. The Border Patrol is aware that Plaintiff Terrence Bressi is a United  
15 States citizen. (**Ex. 12:** Extremely Uncooperative Motorist flyer)

16 29. Many Border Patrol agents who often work at the SR-86 checkpoint  
17 recognize Mr. Bressi and his vehicle on sight. (**Ex. 1:** BP Depo, p. 16)

18 30. Border Patrol agents have displayed a poster with Mr. Bressi’s name  
19 and photograph, with a statement that he is a United States citizen, inside a structure  
20 at the SR-86 checkpoint. (**Ex. 12:** Extremely Uncooperative Motorist flyer.; **Ex. 6:**  
21 Fed. Response to Interrogatory Nos. 9-10)

1           31. When Mr. Bressi passes through the checkpoint, agents often do not  
2 allow him to proceed without stopping him to question him about his citizenship,  
3 even when they recognize him. (**Ex. 1:** BP Depo, p. 79)

4           32. There is no evidence agents at the SR-86 checkpoint have ever  
5 suspected Mr. Bressi of involvement with human smuggling.

6           33. Mr. Bressi has been traveling through the SR-86 checkpoint since its  
7 inception, and only ever drives that route for the purpose of returning to Tucson from  
8 his worksite at the Kitt Peak National Observatory. (**Ex. 13:** Bressi Depo, p. 6)

9           34. Prior to the COVID-19 pandemic, Mr. Bressi traveled through the SR-  
10 86 checkpoint an average of 50-60 times per year. (**Ex. 13:** Bressi Depo, p. 7)

11           35. When COVID restrictions are lifted, Mr. Bressi intends to return to  
12 traditional in-person observing work at the observatory, which will require him to  
13 resume passing through the SR-86 checkpoint. (**Ex. 13:** Bressi Depo, p. 8)

14           Pima County

15  
16           36. The Department of Homeland Security operates a grant program known  
17 as Operation Stonegarden which provides funds to local law enforcement agencies to  
18 compensate officers for overtime work during which they are assigned to assist the  
19 Border Patrol.

20           37. The Pima County Sheriff's Department participated in Operation  
21 Stonegarden from at least 2008-2018. (**Ex. 14:** Subgrantee Agreements)

22           38. Operation Stonegarden deployments were directed and approved by  
23 Customs and Border Protection/Border Patrol. (**Ex. 15:** OPSG Pre-Deployment



1 Training Presentation, p. 17) The arrangement required the Pima County Sheriff's  
2 Department to "coordinate" with the relevant Border Patrol stations to "conduct joint  
3 patrols" and "conduct joint operations." (**Ex. 16:** Operations Order Report, USA –  
4 289-90)

5 39. Pima County Sheriff's Deputies participating in Operation Stonegarden  
6 were required to submit a "Daily Activity Report" for each Stonegarden shift. Those  
7 reports were submitted to the Pima County Sheriff's Department, whose leadership  
8 had access to the information they contained. (**Ex. 15:** OPSG Pre-Deployment  
9 Training Presentation, p. 13)

10 40. Pima County Sheriff's Deputies participating in Operation Stonegarden  
11 were also required to submit regular incident reports, as they would for regular shifts,  
12 for actions taken during Operation Stonegarden shifts, documenting interactions such  
13 as citations and arrests. Those reports were also available to the Department's  
14 leadership. (**Ex. 11:** Pima County Sheriff's Incident Reports)

15 41. Between 2013 and 2017, Pima County Sheriff's deputies were regularly  
16 stationed at the SR-86 checkpoint to carry out general law enforcement duties, as  
17 reflected in the 56 attached incident reports maintained by the Sheriff's Department  
18 in which deputies report working at the checkpoint and enforcing state laws with no  
19 report of having been called there by the Border Patrol for a specific purpose. Deputy  
20 Ryan Roher confirmed this fact in a 2018 interview in state criminal proceedings.  
21 (**Ex. 11:** Incident Reports; **Ex. 17:** Roher RFA response; **Ex. 18:** Roher transcript,  
22 pp. 23-25, 28, 39)

1 42. Pima County Sheriff’s Deputies have no authority to enforce federal  
2 immigration laws. **(Ex. 19: CLEPC Stonegarden Report)**

3 43. The Pima County Board of Supervisors formally approved the County’s  
4 participation in Operation Stonegarden at least once each year between 2013 and  
5 2017. **(Ex. 14: Subgrantee Agreements)**

6 44. Between 2013 and 2017, it was the official policy of Pima County to  
7 allow deputies to be stationed as directed by the Border Patrol during Operation  
8 Stonegarden shifts, and those assignments regularly included working at the SR-86  
9 checkpoint conducting general law enforcement activities such as enforcing vehicle  
10 equipment requirements and checking for outstanding warrants.

11 Dated this 10<sup>th</sup> day of June 2021.  
12

13 Ralph E. Ellinwood, Attorney at Law, PLLC  
14 Knight Law Firm, PC  
15

16 /s/ Ralph E. Ellinwood / Amy Knight  
17 Ralph E. Ellinwood  
18 Amy P. Knight  
19 Attorneys for Plaintiff  
20

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10<sup>th</sup> day of June 2021 I electronically transmitted the attached document to the Clerk's office using the CM/ECF System for filing. Notice of this filing will be sent by operation of the court's electronic filing system or by mail as indicated on the Notice of Electronic Filing.

/s/ Amy P. Knight  
Attorney for Plaintiff

ECF copy to:

Andrew J. Petersen, Esq.  
Humphrey & Petersen, P.C.  
3861 E. Third Street  
Tucson, AZ 85716  
[APetersen@humphreyandpetersen.com](mailto:APetersen@humphreyandpetersen.com)

Dennis Bastron, Esq.  
Assistant U.S. Attorney  
405 W. Congress Street, Suite 4800  
Tucson, AZ 85701  
[Dennis.Bastron@usdoj.gov](mailto:Dennis.Bastron@usdoj.gov)