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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

PLAINTIFF’S CONTROVERTING
STATEMENT OF FACTS TO THE
FEDERAL DEFENDANTS’
STATEMENT OF FACTS

23
24 **PLAINTIFF’S CONTROVERTING STATEMENT OF FACTS**

25 1. Undisputed except as to the characterization of the checkpoint as an
26 “immigration checkpoint,” which Plaintiff disputes as fully laid out in his Motion for
27 Partial Summary Judgment (Doc. No. 104), which is hereby incorporated by
28 reference.

1 2. Undisputed.

2 3. Undisputed.

3 4. It is undisputed that the Border Patrol Handbook contains this statement
4 regarding primary purpose and that the Border Patrol's 30(b)(6) designee stated that
5 the primary purpose of the checkpoint is "immigration" or "alien smuggling." It is
6 disputed that that is indeed the primary purpose of the SR-86 checkpoint as presently
7 operated, as fully laid out in Plaintiff's Motion for Partial Summary Judgment (Doc.
8 No. 104).

9 5. It is undisputed that Border Patrol agents "examine occupants of
10 vehicles as to their right to be or remain in the United States." It is disputed that the
11 SR-86 checkpoint is "located on routes that lead traffic away from the border."
12 (Plaintiff's Ex. #1.)¹

13 6. It is undisputed that the Border Patrol's handbook and policy state that
14 its policy is to use checkpoints on routes of egress with the goal of deterring illegal
15 entry. It is disputed that the checkpoints actually have this effect. First, the cited
16 sources do not say that examining drivers in actuality produces this effect; they say it

¹ The federal defendants filed their Statement of Facts Re: Federal Defendants' Motion for Summary Judgment [Doc. 141] on June 17, 2021. All reference to Exhibits in Plaintiff's Controverting Statement of Facts will be as follows: Plaintiff's Ex. #1-20 refer to the exhibits filed with the Statement of Facts filed with Plaintiff's Motion for Partial Summary Judgment (Doc. 105); new exhibits to Plaintiff's Statement of Controverted Facts filed concurrently with this motion begin with 21 and are identified as "SOCF," and exhibits to the federal defendants' statement of facts (Doc. 141), which are designated with letters, are identified as "Fed Exh

1 is the Border Patrol's policy to use checkpoints for this goal. These policy documents
2 provide no support for a factual assertion about the actual effect of checkpoints.
3 Indeed, the federal defendants have not presented any evidence of the effect
4 checkpoints actually have. In discovery, Plaintiff requested "all data maintained by
5 CBP or USBP, including statistical information and summaries, concerning arrests
6 and seizures at the SR-86 checkpoint, including immigration arrests, narcotics arrests,
7 and arrests for outstanding warrants." (Plaintiff's Ex. #21). The only data produced
8 was the number of immigration, narcotics, and other events and arrests, at the
9 checkpoint for the years 2016-2020. Plaintiff also requested "all documents created
10 by CPB/USP regarding the selection of the location for the SR-86 checkpoint,
11 including any documents addressing the continued need or justification for the
12 checkpoint at that location following its initial establishment." (Plaintiff's Ex. #21).
13 The federal defendants produced a single document: the 2016 memo it has identified
14 as Exhibit J, which is devoid of data or any other evidence to support the authoring
15 agent's very general assertions. These discovery responses indicate that the Border
16 Patrol does not have any actual data on the effect of checkpoints.

17 7. This fact is disputed for the same reasons as Fact #6: the statement
18 comes from a Border Patrol policy document unsupported by evidence of the true
19 effect of checkpoints. Moreover, there is no evidence in the record about terrorism
20 and no evidence whatsoever about the effect of the SR-86 checkpoint in particular
21 (located on a small east-west road) on "securing the Nation's borders against
22 terrorism, smugglers of weapons of terrorism, other contraband and illegal aliens."

1 8. Undisputed.

2 FACTS 9-13 and 19-21:

3 These 8 facts are all supported solely by reference to “Exhibit J,” a memo
4 drafted by a Border Patrol agent for the purpose of justifying the Tucson Sector
5 checkpoint program in 2016. The memo is devoid of data—or any other type of
6 evidence—to support its assertions about “people” and “traffic” in specified time
7 periods. In light of the federal defendants’ extremely limited production in response
8 to RFPs 17 and 19 (discussed in Fact #6 above), the record shows that the Border
9 Patrol does not have actual evidence of the behavior of smugglers, migrants, and
10 others in the area during the specified time periods, or did not rely on it in its
11 checkpoint-location-selection process.

12 Indeed, the record shows that the agency collects very little data and has very
13 little information about the checkpoint location selection process. The Border Patrol’s
14 representative affirmatively testified that the agency does not keep track of how many
15 vehicles pass through the checkpoint (Plaintiff’s Ex. #1 at 50). He also did not know
16 who had made the crucial decision about where to place it:

17 Q: Okay. Now, who made the determination to – to locate
18 the checkpoint originally at milepost 145?

19 A: Sir, I have no idea who made that determination.

20 Q: Okay. Who made the determination to locate it at its
21 present location?

22 A: Sir, I’m not aware of that.

23 Q: So even though you are – you are here testifying on
24 behalf of the Border Patrol, you don’t know who made
25 the decision to establish the checkpoint, State Route 86,
26 in its present location?

27 A: That is correct, sir. (Plaintiff’s Ex. #1 at 10-11)

1 Moreover, Exhibit J was created in 2016—fully 8 years after the SR-86
2 checkpoint was established. Accordingly, as a general matter, Exhibit J cannot serve
3 as supporting evidence for any claim about what was actually occurring on the
4 roadways in the area at any particular time or what effect the checkpoint was having
5 on those events. Plaintiff requested the data that would be needed to prove or disprove
6 these assertions; the federal defendants represented that they do not have it.

7 9. This fact is disputed because it relies solely on the unsupported
8 assertions in Exhibit J.

9 10. This fact is disputed because it relies solely on the unsupported
10 assertions in Exhibit J.

11 11. This fact is disputed because it relies solely on the unsupported
12 assertions in Exhibit J.

13 12. It is undisputed that the SR-86 checkpoint was opened first, and two
14 more checkpoints in the Tucson Station’s jurisdiction were subsequently opened. It
15 is disputed that the SR-86 checkpoint, located on a small east-west road, targets a
16 route of egress from the border to the Tucson metro area.

17 13. This fact is disputed because it relies solely on the unsupported
18 assertions in Exhibit J. Specifically, it is disputed that the SR-86 checkpoint targets
19 traffic traveling away from border areas. SR-86 is an east-west road, connecting the
20 town of Ajo and the city of Tucson, both within the United States and Arizona, and
21 the nearby roads that do lead away from the border have checkpoints on them.

22 (Plaintiff’s Ex. #1 at 30-31.)

1 14. It is not disputed that it is possible for individuals to illegally cross the
2 border between Mexico and the Tohono O’odham Nation, just as it is possible for
3 individuals to illegally cross the border between Texas, New Mexico, Arizona, or
4 California and Mexico. It is disputed that any significant amount of “traffic” enters
5 the United States this way. The federal defendants have provided no evidence, other
6 than the vague assertion, that any “traffic” enters the United States this way. When
7 asked for any documents reflecting their location-selection process (RFP No. 19),
8 they provided no data or even estimates, no specific instances of such entries, and no
9 documents of any kind suggesting a problem with traffic coming through the Tohono
10 O’odham Nation. Indeed, the sole document produced, the 2016 memo designated
11 Exhibit J, observes that most of the traffic through the SR-86 checkpoint “is
12 employees returning from work in Sells, Arizona or the Kitt Peak Observatory.” The
13 full testimony of 30(b)(6) designee Agent Teran on this issue was:

14 A: There are two major roads that lead from the border to Tohono
15 O’odham Nation, which is FR21 and FR—and Federal Route
16 19. Both those locations, they have direct access to the border,
17 and, therefore, State Route 86 is the equivalent of the border at
18 that – that location. Traffic can come in and—traffic does enter
19 illegally and access the road, and they use State Route 86 in
20 order to further themselves into the United States . . . Traffic
21 does enter illegally on the international boundary to the Tohono
22 O’odham Nation, sir . . . So, yes, the checkpoint—the
23 justification of the checkpoint is for us to detect and deter traffic
24 coming through areas of the Tohono O’odham Nation, as well
25 as areas of the Tucson Station, as well as areas in the Ajo Border
26 Patrol Station. (Fed. Exh. B, pp. 31-32).

27
28 Notably, the federal defendants have never cited any authority for the
29 proposition that a boundary of an Indian reservation is the equivalent of an

1 international boundary. Indeed, each of the “gates” between the U.S. and Mexico
2 portions of the reservation is monitored by the Border Patrol. (Plaintiff’s Ex. #1, p.
3 19, l. 20-p. 20, l. 3)

4 15. This fact is disputed. It is unclear what the federal defendants mean by
5 “the border area of the reservation.” FR 21 never intersects the US-Mexico border,
6 and FR 19 runs from the border to the town of Sells. Both are small roads not
7 significantly developed or heavily traveled. SR 86 runs east-west across the entire
8 width of the reservation and intersects a number of small, lightly traveled rural roads.
9 As noted above, the designated agent’s testimony about FR 21 was incorrect.

10 16. This fact is disputed. It is unclear what the federal defendants mean by
11 stating SR-86 “can connect traffic from the reservation to the rest of the United
12 States.” Moreover, the cited testimony for this point is Agent Teran’s mistaken
13 assertion that because it intersects a road on the reservation with an international
14 boundary, SR-86 is the equivalent of the border. (*See* passage quoted in Fact #14). It
15 is not disputed that SR-86 runs across the reservation but terminates outside of the
16 reservation in Arizona on both ends.

17 17. This fact is disputed. The cited testimony says nothing about the actual
18 effect or efficacy of the checkpoint; it refers only to the Border Patrol’s asserted
19 justification for the checkpoint, *i.e.*, the goal it has stated it intends to accomplish.
20 That does not constitute evidence that the checkpoint actually detects or deters
21 smuggling coming through the reservation. *See also* response to Fact #6.

1 18. It is undisputed that the checkpoint was originally operated at milepost
2 145, which is at the boundary of the reservation. It is undisputed that there is a road
3 just to the east of the original checkpoint location, Hayhook Ranch Road. It is
4 disputed that any significant number of people would “get in vehicles and circumvent
5 the checkpoint” using Hayhook Ranch Road or that there was any measured or
6 documented “increase in foot traffic coming across the border.” The federal
7 defendants have provided no data or other evidence of an increase in foot traffic, nor
8 of any sort of pattern of individuals getting in cars somewhere along Hayhook Road
9 and circumventing the newly installed checkpoint, as any factor in the decision on
10 where to place the checkpoint. Because the federal defendants produced no such
11 documentation when asked for all documents pertaining to the selection of the
12 checkpoint’s location, presumably no such documents exist, or if they do, they were
13 not relied on in choosing a location for the SR-86 checkpoint.

14 19. This fact is disputed because it relies solely on the unsupported
15 assertions in Exhibit J. The federal defendants have provided no data or other
16 evidence of the frequency of smuggling, bailouts, and failures to yield in 2016 or at
17 any time prior. Because the federal defendants produced no such documentation when
18 asked for all documents pertaining to the selection of the checkpoint’s location,
19 presumably no such documents exist, or if they do, they were not relied on in choosing
20 a location for the SR-86 checkpoint. Moreover, even taken at face value, Exhibit J
21 does not state that community safety had improved, but rather that “[s]everal residents
22 in these areas” said they felt safer.

1 20. This fact is disputed because it relies solely on the unsupported
2 assertions in Exhibit J. Exhibit J does not contain data about the numbers or locations
3 of apprehensions of individuals on foot either before or after the opening of the
4 checkpoints. Although it does appear it may contain some information about the
5 location of certain seizures during a single fiscal year—FY16—the Border Patrol has
6 redacted those sections and declined to provide them, even subject to a protective
7 order. Accordingly, it may not rely on them in its defense. In any event, single-year
8 data from 8 years after the checkpoints were opened could never support the assertion
9 that the checkpoints have caused a change. And even if there were data showing that
10 apprehensions on foot were more frequently occurring further north, that would not
11 establish a causal relationship. The record simply contains no evidence that the
12 checkpoints have this effect.

13 21. This fact is disputed because it relies solely on the unsupported
14 assertions in Exhibit J. It constitutes a conclusion stated by the authoring agent in a
15 document the federal defendants have agreed was created to explain the checkpoint
16 program to command staff. (Fact #9). Moreover, at least as concerns the SR-86
17 checkpoint, the statement is demonstrably false. The two nearby roads that actually
18 do lead away from the border both contain checkpoints. Fed. Exhibit B at 31. To
19 characterize the journey from the west desert to Tucson via SR-86 without accessing
20 SR-286 or Arivaca East Road as an “unobstructed route of egress” is untethered to
21 reality. The area along the border and south of SR-86 is mountainous and extremely
22 treacherous, most of it unpopulated. Indeed, this very fact is central to the Border

1 Patrol's core modern enforcement strategy, known as "prevention through
2 deterrence," which assumes that when enforcement in urban crossing areas is
3 expanded, "illegal traffic will be deterred, or forced over more hostile terrain, less
4 suited for crossing and more suited for enforcement," and that "[i]llegal entrants
5 crossing through remote, uninhabited expanses of land and sea along the border can
6 find themselves in mortal danger." (Plaintiff's Ex. #22) There are few roads. It is
7 unclear exactly what route away from the border involving SR-86 but not SR-286 or
8 Arivaca Road could be "unobstructed." Moreover, there is no evidence in the record
9 that any such route was consistently used by smugglers prior to the establishment of
10 the checkpoint. Indeed, there has never been a time period when the SR-286 and
11 Arivaca East (north-south) checkpoints were operating without the SR-86 checkpoint,
12 *see* Fact #12, so it is not possible to know what sort of smuggling traffic might occur
13 in that configuration.

14 FACTS 22-32:

15 It is undisputed that these are accurate statements of the Border Patrol's official
16 policy. Plaintiff does dispute that agents "should" do any of these things at a
17 checkpoint on SR-86, for the reasons articulated in Plaintiff's Motion for Partial
18 Summary Judgment (Doc. No. 104).

19 33. Undisputed.

20 34. This statement is disputed. It is unclear what "fact" the federal
21 defendants are asserting here. In particular, it is unclear what is meant by "and
22 creating an additional cause," and what is meant by "sitting at the checkpoint." To

1 the extent the agent is describing what he would do in a particular situation, that is
2 not a statement that can fairly be disputed or undisputed and does not bear on this
3 case. It is strongly disputed that a motorist who has been stopped by Border Patrol at
4 the checkpoint and is not free to leave is “holding up the traffic.”

5 35. It is undisputed that agents can access law-enforcement databases that
6 contain citizenship information. It is disputed that the purpose of accessing these
7 databases is to check if the driver is a U.S. citizen. (Plaintiff’s Ex. 1, pp. 71-73)

8 36. This fact is disputed. Plaintiff maintains that if an individual is known
9 to agents or supervisors at the checkpoint as a U.S. citizen, no lawful purpose for any
10 sort of inspection or detention exists.

11 Additionally, the evidence cited by the federal defendants does not clearly
12 support its assertion that the policy is that agents should conduct a plain-view
13 inspection and run a K-9 around the vehicle of a known individual. First, much of the
14 cited deposition testimony is not actually in the referenced exhibit, which ends at the
15 bottom of page 81. When the entire passage is viewed together, it is apparent that in
16 fact, the 30(b)(6) designee carefully avoided providing a clear or complete answer to
17 the question of precisely what was required for agents to allow a known individual to
18 proceed:

19 **Q: Just to be clear, the motorist pulls up and refuses to answer**
20 **the citizenship question. They’re not honking their horn,**
21 **they’re not doing anything else, what is necessary for them**
22 **to be released from the checkpoint?**

23 **A:** So, at that point, each motorist that arrives at the checkpoint, we
24 have the application in which would determine that citizenship.
25 We’re asking for the motorist to identify themselves; we’ll ask

1 them if they're a US. Citizen. The majority of the motorists do
2 comply with our request, and then you're on the road fairly
3 quickly. If they're not—in the case they are questioned and
4 they're not willing to respond to our question, this is where we'll
5 go back to say, hey—somebody that we've seen before—maybe
6 I'm a new agent to the checkpoint, I—I'm gonna ask my
7 supervisor for some assistance. At that point, if nobody knows
8 who this person is, if this person is not willing to go to secondary
9 and remains at the—at the primary location, we will run a license
10 plate check. There's a couple different tools that they'll use in
11 order to determine this person's identity. Once we're satisfied
12 with our requirements, they are on their way. But, at this point,
13 if they're not responding cooperative, we're going to send them
14 to secondary so we can further investigate that, as the motorist
15 is not willing to provide information or that they're legally
16 allowed to remain, travel to, travel through the United States.

17 **Q: But if they're known to the Border Patrol, then your answer**
18 **is they're allowed to proceed?**

19 A: If this is a person that's come to my checkpoint and has
20 identified themselves as an United States citizen and I—and
21 made a distinct—they decide they're not going to answer my
22 questions, I'm looking in plain view. I conduct my—my
23 immigration—I can also use follow-up questions, say, are you
24 still a United States citizen? I might get a nod, a little chuckle,
25 and then I continue on. That satisfied my requirement as a
26 Border Patrol Agent; that it's still the same person. If I know the
27 person's name, I might call them by their name; it hasn't
28 changed. They can continue on. So, yes, we're trying to prevent
29 people from—that is the primary function at the checkpoint, is
30 immigration business. But we're also not gonna create a
31 situation for—that's unwarranted in nature. (Plaintiff's Ex. #1,
32 pp. 81-83).

33
34 Thus, the agent failed to provide a clear answer as to what Border Patrol policy
35 dictates an agent should do when encountering a known U.S. citizen who refuses to
36 answer questions. It seems he began to say he would conduct an immigration
37 inspection, but then apparently realized this made no sense, as the question
38 presupposed both known citizenship and a refusal to answer. He then shifted to

1 suggesting that he needed to get some response to a follow-up question so he could
2 confirm “that it’s still the same person.” That is an entirely different requirement from
3 conducting a plain-view inspection or running a K-9.

4 Indeed, the Border Patrol has repeatedly refused, during this litigation, to
5 provide a straightforward answer to questions about whether agents may insist upon
6 an answer to the citizenship question from known individuals. Initially, they objected
7 to interrogatories posed to the Border Patrol Chief because he “is a high-ranking
8 government official,” and the questions were “argumentative,” despite the fact that
9 they merely asked what policy would dictate in a hypothetical situation, and made no
10 claims about what agents were actually doing in particular instances (Plaintiff’s Ex.
11 #23, Federal Defendants Objections re: Plaintiff’s Interrogatories to Chief Rodney
12 Scott, dated 11/20/20.) Eventually, they answered: “In general, agents at the primary
13 inspection area should stop every vehicle, identify themselves as Border Patrol
14 agents, inquire as to the citizenship of the occupants, and look at areas of the vehicle
15 within plain view. They should do that even if they are familiar with the driver of the
16 vehicle.” (Plaintiff’s Ex. #24) This is a third different version of the policy. Plaintiff
17 submits that the agents’ practice is often to insist on an answer to the question even
18 when citizenship is already known. *See* Facts 55-82, *infra*.

19 Finally, the second citation the federal defendants provide for this alleged fact
20 does not contain any support for the proposition that the correct response is a plain-
21 view and K-9 inspection. The cited guidance provides direction for what to do if “the
22 agent either remains unconvinced of any of the vehicle occupant’s legal presence in

1 the United States or possesses reasonable suspicion of criminal wrongdoing,”
2 situations not at issue here, but directs that “[i]f it appears that an uncooperative
3 motorist is legally present in the United States, enforcement discretion may dictate
4 that the motorist should be allowed to proceed without further delay.” Exhibit L at 3.
5 This is a fourth different version.

6 In short, Fact #36 is disputed because the record demonstrates the Border
7 Patrol will not commit to a policy about its treatment of known U.S. citizens at
8 checkpoints.

9 37. It is undisputed that the Border Patrol’s policy is to stop every vehicle
10 even if the occupant is known. It is disputed that agents “should” do this, as detailed
11 in Plaintiff’s Motion for Partial Summary Judgment (Doc. 104).

12 38. It is undisputed that it is theoretically possible for a U.S. citizen to hide
13 someone or something in his vehicle (although if this were truly an immigration-
14 focused checkpoint, only the “someone,” not the “something” would be relevant). It
15 is disputed that there is any significant problem with motorists known to agents as
16 local commuters or residents exploiting this familiarity to accomplish smuggling
17 through checkpoints. Agent Teran’s testimony is extremely vague; he testified only
18 that there have been some unspecified number of “instances” over the course of his
19 approximately 19-year career where a person who “travels through the checkpoint”
20 with unspecified frequency under unspecified circumstances has at some unspecified
21 point in the future been “apprehended or charged with smuggling,” not necessarily
22 smuggling of humans (the only type that should be relevant if the primary purpose of

1 the checkpoint were immigration enforcement), again under unspecified
2 circumstances. Fed. Exh. B at 16.

3 39. Undisputed.

4 40. Undisputed.

5 41. Undisputed.

6 42. Undisputed.

7 43. Undisputed.

8 44. Undisputed.

9 45. Undisputed.

10 46. Undisputed.

11 47. It is undisputed that Mr. Bressi writes commentary to post with videos,
12 and that it sometimes contains Border Patrol agents' names. It is disputed that he said,
13 or believes, that agents have no privacy interests at all. Rather, he said, "They're
14 operating in the public sphere seizing people absent suspicion along a public highway.
15 They don't have a privacy interest in those actions." Fed. Exh. D at 18.

16 48. It is undisputed that Mr. Bressi has done each of these things. It is
17 disputed that he does all of them on a regular basis. He testified that he has demanded
18 the names of supervisors "occasionally," Exhibit D at 33, and that he "can think of
19 maybe once, possibly twice," when he's told an agent to "piss off." Fed. Exh. D at
20 34.

21 49. Undisputed.

22 50. Undisputed.

1 51. It is undisputed that Mr. Bressi testified that he only recalls one instance
2 of seeing a Border Patrol agent with a weapon other than a normal sidearm, but it is
3 disputed that this constituted his answer to a question about why he is concerned for
4 his safety. The question was: “Q: I’m going to switch gears just a little bit. You say
5 “armed federal agents.” Generally, an agent just has sort of a regular sidearm, like a
6 handgun, a sidearm. Have you ever seen agents there with other weapons?” Fed. Exh.
7 D at 37.

8 The attorney for the federal defendants did not ask Mr. Bressi specifically to
9 explain all his reasons for fearing for his safety, but after fielding questions about
10 whether he had been injured or received citations, Mr. Bressi explained:

11 A: Yes. I’d like to backtrack just a little bit in regards to the safety
12 question. Although I haven’t been harmed physically by any
13 Border Patrol agent there, I’ve seen videos online in the Tucson
14 sector, I think specifically the one that I’m thinking of from
15 maybe back in 2008 or 2009, where an individual who was at a
16 Yuma checkpoint was Tased, had his head slammed down into
17 broken glass and was beaten on the side of the road by Border
18 Patrol agents and Arizona DPS officers.”

19 Q: Getting back to the traffic citations. . .” Fed. Exh. D p. 39.
20

21 52. It is undisputed that Mr. Bressi has never been physically injured by a
22 Border Patrol agent at the SR-86 checkpoint.

23 53. It is undisputed that in these 10 encounters, Mr. Bressi was waved
24 through the checkpoint after only a brief inspection. However, it is disputed, and is
25 not apparent from the videos, that each of the agents recognized Mr. Bressi as an
26 activist and released him for that reason.

27 In particular:

- 1 • October 24, 2019: No indication of recognition.
- 2 • October 31, 2019: No indication of recognition.
- 3 • November 13, 2019: Agent greets him by name. There is no indication
- 4 the reason for his release is this recognition or knowledge of his
- 5 activism; indeed, the car in front of him is released just as quickly.
- 6 • November 15, 2019: No indication of recognition.
- 7 • November 22, 2019: No indication of recognition.
- 8 • December 18, 2019: Recognition unclear; agent in the background
- 9 waves.
- 10 • January 2, 2020: No indication of recognition.
- 11 • January 9, 2020: Agent greets him by name. There is no indication the
- 12 reason for his release is this recognition or knowledge of his activism.
- 13 • February 26, 2020: No indication of recognition.
- 14 • March 13, 2020: No indication of recognition.
- 15

16 It is further disputed that these are the 10 most recent encounters. The federal
17 defendants have omitted from this exhibit an encounter on November 25, 2019, in
18 which agents in fact recognize Mr. Bressi and greet him by name (0:17), and then
19 have a dog sniff around his truck at length (00:30-01:16) before telling him he is free
20 to leave. (Plaintiff's Ex. #25)

21 54. This fact is disputed. The request was: "Please identify all of your
22 videos that show Border Patrol agents detaining you until you explicitly answered
23 whether or not you were a U.S. citizen."

24 **FACTS 55-82:**

25 Each of these facts constitutes a description of the events in a video of an
26 encounter between Mr. Bressi and Border Patrol agent(s) at a checkpoint. Mr. Bressi
27 respectfully suggests that the videos themselves are a better representation of what
28 occurred than the federal defendants' selective summaries. Mr. Bressi specifically

1 disputes these facts to the extent they attribute a motivation to any of the participants
 2 or characterize the interactions.

3 It is disputed in particular that Mr. Bressi’s purpose in remaining at the
 4 checkpoint in any of these videos is to argue with or yell at agents. *See* Fed. Exh. D
 5 at 35-36:

6 Q: I’ve also seen where they’re actually telling you to leave the
 7 checkpoint and they’re saying you’re free to go, go, and you
 8 don’t leave, you stay there and you continue to argue with the
 9 agents. Is that something that you do?

10 A: I wouldn’t categorize it as arguing. I’m usually looking for
 11 information. So I’m concerned about the action of the agents up
 12 to that point and I may be requesting the name of their supervisor
 13 or something to that effect so I may ask that question a couple of
 14 times before I pull away. But it’s in response to—because when
 15 that happens is because I feel the agents have overstepped their
 16 boundaries and I’m at a stage where I want to get more
 17 information so I can file a complaint if I need to or I have that
 18 information on hand so it can be referenced at a later date.”
 19

20 For the Court’s convenience, Plaintiff here provides the federal defendants’
 21 description of each video, alongside Plaintiff’s additional observations:

Fed. Fact # and Date	FEDERAL DEFENDANTS	PLAINTIFF
55 (April 14, 2005)	On April 14, 2005, Bressi drove through another checkpoint (not the State Route 86 checkpoint). See Exhibit N: Videos Identified in Answer to Interrogatory No. 4 [BRE0001_14APR2005.mp4]. The agent asked Bressi his citizenship. Forty seconds into the video, the agent asked Bressi to pull into the secondary inspection area. Bressi refused. After four minutes, agents asked him to leave	It is disputed that Bressi’s response to the agent’s asking him to move his vehicle “off to the side” was to “refuse.” As the video clearly shows, Mr. Bressi asked why they wanted him to move his vehicle, and then asked whether he was being detained or whether he was free to go. Agents repeatedly told him he was <i>not</i> being detained. When the agent told

	the checkpoint altogether. Bressi stayed for about 40 more seconds to argue with agents before leaving.	him he was free to go, he asked her to explicitly confirm that he was permitted to leave the checkpoint.
56 March 3, 2008)	On March 3, 2008, an agent asked Bressi to state his citizenship and identified the purpose of the checkpoint. Exhibit N [BRE0007_03MAR2008.mp4]. Bressi refused to answer. After one minute and 40 seconds, the agent waved Bressi through the checkpoint.	The federal defendants' description of this incident omits the fact that after stating it was an immigration checkpoint, the agent advised Mr. Bressi that he had not given permission to film him. Mr. Bressi asked whether he was being detained and the agent said he was not, but when Mr. Bressi asked if he was free to go, the agent repeatedly asked him to state his citizenship.
57 (April 22, 2008)	An agent greeted Bressi and asked for him to state his citizenship. See Exhibit N [BRE0010_22APR2008.mp4]. Bressi refused. The agent identified the purpose of the checkpoint as immigration. After 52 seconds, an agent asked Bressi to move to the secondary inspection area. Bressi refused, and at one minute and 15 seconds into the video, Bressi turned off his vehicle and put it in park, still in the primary lane. Seven minutes and 40 seconds into the video, the agent asked Bressi to leave the checkpoint. Bressi remained and argued with the agent for another minute and 20 seconds before leaving nine minutes into the video.	When Mr. Bressi asked, upon being told to move into the secondary inspection area, whether he was being detained, this agent responded in the affirmative. After a second agent approached, Mr. Bressi inquired whether an agent was touching his vehicle, and the second agent stated "Yeah, he just raised the hood on it." Mr. Bressi stated, "tell him to keep his hands off my vehicle unless he has a warrant." The agent then informed Mr. Bressi that <i>he</i> , Mr. Bressi, is violating the rights of the motorists behind him (although he did not state what rights or how a private citizen was violating them). He then denied that Mr. Bressi had been seized. Mr. Bressi repeatedly asked whether he

		<p>was free to go and the supervisor said he was not—until he stated his citizenship. At 07:36 in the video, the agent stated he had just spoken to his supervisor, who instructed him to wave Mr. Bressi through. Mr. Bressi asked the agent to confirm that he was free to go, and the agent stated, “You were always free to go.” Mr. Bressi remained to make sure it was clear that his stop was <i>not</i> voluntary. It should be noted that this video contains several pauses for written commentary, and thus the times noted in the video are somewhat longer than the length of the actual encounter.</p>
<p>58 (November 26, 2008)</p>	<p>Two minutes and twenty seconds into the video, Bressi reaches the checkpoint. Exhibit N [BRE001626NOV2008.mp4]. The agent asks Bressi to state his citizenship and identifies the purpose of the checkpoint. Bressi refuses to answer. Three minutes and 24 seconds into the video, the agent instructs Bressi to drive into the secondary inspection area. Bressi refuses. Nine minutes into the video, a supervisor tells Bressi he can leave.</p>	<p>After the agent asked Mr. Bressi to state his citizenship and stated it is an immigration checkpoint, Mr. Bressi asked whether he was being detained. The agent stated he was not. Mr. Bressi continued to ask whether he was free to go, and the agent continued to ask him whether he was a United States citizen. After the agent asked him to move to secondary, Mr. Bressi asked why he was being directed there. The answered “you are making an obstruction to my job, sir” and that it was an immigration inspection. A second agent then stated clearly that Mr. Bressi is not free to go specifically because he has</p>

		not answered their question. At 06:12, the second agent stated “You can put this on YouTube, I know who you are.” A third agent then told Mr. Bressi he was <i>not</i> being detained, but he was not free to go until he answered their question (even though they had just stated they knew who he was).
59 (December 20, 2008)	The agent asks Bressi to state his citizenship and identifies the purpose of the checkpoint. Exhibit N [BRE0020_20DEC2008.mp4]. Bressi refuses to answer. Two minutes and 25 seconds into the video, the agents tell Bressi to leave. Bressi refuses to leave, remaining to yell at the agent before leaving 40 seconds later.	After the agent asked Mr. Bressi his citizenship, Mr. Bressi asked the agent’s name and whether Mr. Bressi was being detained, and the agent did not answer. The agent then stated, “I know who you are, and I’ve seen your videos.” He then asserted Mr. Bressi had never stated his citizenship coming through this checkpoint. The agent continued to refuse to identify himself to Mr. Bressi.
60 (August 14, 2010)	Bressi arrives at the stop sign in primary 34 seconds into the video. Exhibit N [BRE0097_14AUG2010]. The agent at primary apparently recognizes Bressi, places a spike strip down, and gets his supervisor. The supervisor tells Bressi to drive through the checkpoint two minutes and 20 seconds into the video.	The federal defendants’ description neglects to mention that when Mr. Bressi entered the checkpoint, none of the agents present asked him any questions, including any citizenship question, before they placed down a spike strip. After they placed down the spike strip, the only question they asked him was, “How you doing, Mr. Bressi?”
61 (September 2, 2011)	Bressi arrives at the stop sign one minute and 40 seconds into the video. Exhibit N [BRE0159_02SEP2011.mp4]. The agent asks Bressi whether he is a U.S. citizen. Bressi refuses to	Prior to asking any questions, the agent physically rapped on Mr. Bressi’s window. After asking Mr. Bressi if he was a U.S. citizen, the agent walked away,

	<p>answer. The agent calls for his supervisor. After the supervisor walks over, at two minutes and 50 seconds into the video, the supervisor and agent tell Bressi to leave the checkpoint. Bressi yells at the agents while driving away.</p>	<p>leaving Mr. Bressi alone in the primary inspection lane at approximately 02:08, and Mr. Bressi waited for him to return for nearly a full minute. When the agent returned and confirmed he was free to go, Mr. Bressi did leave the checkpoint.</p>
62 (September 25, 2011)	<p>Bressi arrives at the stop sign 38 seconds into the video. Exhibit N [BRE0164_25SEP2011.mp4]. An agent puts his hat up to block Bressi's camera. The agents ask Bressi to roll down his window, then when he refuses, they ask him to move to the secondary inspection area, one minute and 6 seconds into the video. Bressi refuses to move to secondary. The agent apparently calls the Sheriff's Department, then a higher-ranking supervisor. The supervisor's vehicle arrives 24 minutes and 20 second into the video, and the supervisor reaches Bressi's vehicle 25 minutes and 14 seconds into the video. The supervisor asks Bressi to pull into secondary again, and when Bressi declines, the supervisor tells Bressi he can leave the checkpoint. Bressi remains at the checkpoint for over two minutes to argue with the supervisor before leaving the checkpoint 27 minutes and 35 seconds into the video.</p>	<p>When Mr. Bressi entered the checkpoint, after the agent covered his camera, he asked whether he was free to go. One agent said yes; another asked Mr. Bressi to roll down his window. After an agent asked him to move to secondary, Mr. Bressi asked whether he was being detained, and the agent refused to answer. At approximately 03:00, the agent told Mr. Bressi, "Please don't film me." An agent explicitly stated "I can't allow you to go until you answer my question." Mr. Bressi stated he was perfectly willing to leave the checkpoint as soon as they would allow him to. Approximately 10 minutes into the video, the agent, having just received a call on a second cell phone he was carrying, clearly states, "Who? Bressi?" Apparently, whoever had called him knew Mr. Bressi's identity. Nonetheless, the agent continued to detain Mr. Bressi at the checkpoint for approximately 15 more minutes. At approximately</p>

		<p>18:30, Mr. Bressi, talking on the phone to another individual, confirmed that whoever the agent was talking to on the radio had identified Mr. Bressi, but they continued to detain him. When a supervisor finally arrived, he asked Mr. Bressi to pull over to secondary, Mr. Bressi asked why, and the agent told him “We’re done, pretty much. You can go.” The supervisor then confirmed that the agent had been holding Mr. Bressi because he did not answer their question.</p>
<p>63 (March 29, 2013)</p>	<p>When Bressi arrives at the stop sign, agents point their phones at Bressi while Bressi presses his horn. Exhibit N [BRE0222_29MAR2013.mp4]. Bressi starts to drive away before being waved through. Agents instruct him to stop and drive into the secondary inspection area. Bressi refuses to go into secondary. At three minutes and 33 seconds, a Sheriff’s Deputy arrives and speaks to Border Patrol agents before addressing Bressi. At five minutes and 55 seconds, the deputy tells Bressi that he is violating state law by blocking a public roadway. Bressi finally moves to the secondary area at six minutes and 52 seconds into the video. Fifteen minutes into the video, a deputy asked Bressi for his driver’s license. Twenty-one minutes into the video, a deputy issued Bressi a citation for blocking a public roadway. Bressi</p>	<p>When Mr. Bressi arrived, the first of the two agents pointing their phones at him (presumably to take video of him) said “Hey, it’s Mr. Bressi!” An agent to Mr. Bressi’s right then waved to him. As Mr. Bressi then began to pull out of the checkpoint, one of the agents yelled extremely loudly, and Mr. Bressi immediately stopped. The federal defendants’ description of the video neglects to note that the agents never attempted any sort of immigration inspection or asked Mr. Bressi any questions. As soon as the deputy unambiguously directed Mr. Bressi to pull his vehicle over, he did so (at approximately 07:00). When the deputy requested Mr. Bressi’s license, he immediately provided it and</p>

	<p>remained pulled over for several more minutes to argue with the deputy about the citation, ask for names, badge numbers, and supervisors, and arguing with the original Border Patrol agents.</p>	<p>asked the deputy to tell the Border Patrol agents to keep their hands off his vehicle, noting that this is the second time they had put their hands on his vehicle (15:17). The deputy cited him for “stopping unnecessarily on a highway.” (21:02). When the citation was completed, Mr. Bressi remained to collect the names and numbers of the agents and officers.</p>
<p>64 (September 17, 2013)</p>	<p>Bressi arrives 40 seconds into the video. Exhibit N [BRE0240_17SEP2013.mp4]. An agent instructs Bressi to roll down his window. When Bressi refuses, the agent instructs Bressi to pull into the secondary inspection area. Bressi refuses. The agent talks to his supervisor, then tells Bressi to leave the checkpoint one minute and 23 seconds into the video.</p>	<p>The agent physically tapped on Mr. Bressi’s window before saying anything and at no point did any of the Border Patrol agents ask Mr. Bressi his citizenship or any other questions.</p>
<p>65 (April 30, 2014)</p>	<p>The agent asks Bressi to state his citizenship. Exhibit N [BRE0263_30APR2014.mp4]. Bressi refuses to answer and asks the agent to state his first name. The agent apparently places a spike strip in front of Bressi’s truck while Bressi honks and yells at the agent. Border Patrol agents brought over a deputy, who attempted to have Bressi state his name. Bressi left the checkpoint four minutes and 52 seconds into the video. Later, Bressi turns his cameras on again during a traffic stop initiated by the deputy outside the boundaries of the checkpoint.</p>	<p>When Mr. Bressi pulled into the checkpoint, he asked the agent’s name; the agent provided his last name, and asked for citizenship. He then said, “Mr. Bressi?” (0:39). The agent then asked Mr. Bressi his citizenship again, despite having just identified him. Mr. Bressi asked if the agent was detaining him and the agent said yes but would not provide a basis. A supervisor arrived; the original agent then told Mr. Bressi there was a spike strip in front of his tire (01:47). It is unclear what the federal</p>

		<p>defendants are attempting to categorize as Mr. Bressi “yell[ing] at the agent.” In addition, despite showing no signs of distress at the time, the original agent from this encounter subsequently attempted to get the prosecutions unit to bring charges against Mr. Bressi for allegedly “assaulting” him by damaging his hearing while honking the factory-issue horn on his truck. (Plaintiff’s Ex. #26, Tackett incident)</p>
<p>66 (February 9, 2015)</p>	<p>[The video produced by Bressi ends after five seconds.] Exhibit N [BRE0288_09FEB2015.mp4].</p>	<p>This was due to a technical issue, and Plaintiff has since provided a complete version of the video. (Plaintiff’s Exhibit 27, Video of February 9, 2015) When Mr. Bressi arrived at the checkpoint, the agent told him to roll down his window. Mr. Bressi held up a printed note advising that he does not consent. The agent leaned against a post some distance away and stated he could not read it. Three agents then watched Mr. Bressi sit there for nearly 30 seconds, at which point the agent told him he could leave, and Mr. Bressi observed, “You did hear your supervisor tell you twice before, didn’t you?” suggesting that the supervisor had instructed the agent to let Mr. Bressi leave, and the agent had intentionally delayed relaying that permission. At no point did the agent ask his</p>

		citizenship or any other questions.
67 (March 26, 2016)	<p>An agent asks Bressi whether he is a U.S. citizen. Exhibit N [BRE0330_26MAR2016.mp4]. Bressi refuses to answer. One minute and two seconds into the video, another agent instructs Bressi to move his vehicle to the secondary inspection area. Bressi refuses to go over. An agent places a spike strip in front of Bressi's vehicle, then Bressi honks his horn. Bressi continues to honk his horn and argue with agents for several minutes. Nine minutes and ten seconds into the video, a deputy arrives and tries to speak to Bressi. Twelve minutes and 45 seconds into the video, Bressi is told he can leave the checkpoint, but the deputy instructed him to pull over past the checkpoint. At sixteen minutes and 30 seconds into the video, the deputy initially cited Bressi for littering but ultimately allowed him to leave with a warning.</p>	<p>After the agent first asked Mr. Bressi to state his citizenship, another agent can clearly be heard in the background stating that it is Terry Bressi (00:48). Only after that did a supervisor ask Mr. Bressi, whom the agents had just identified, to move to secondary, before placing a spike strip in front of his truck and informing him if he tried to move, he would get a flat tire. At 02:48, the original agent asked again if he was a United States citizen. Mr. Bressi then said to a supervisor, "let me know when I'm free to go," and the agent said, "As soon as you answer my question," even though the agents had already explicitly identified Mr. Bressi. At 05:12, the supervisor returned and continued to ask Mr. Bressi about his citizenship and state that Mr. Bressi would not be free to go until he answered the question. Mr. Bressi attempted to give the agents a copy of an ACLU report. The agents accused him of throwing trash on the ground (05:40), as Mr. Bressi repeatedly said that he was giving the literature to the agents, and it was for them. When the deputy arrived, he attempted to convince Mr.</p>

		Bressi to answer the Border Patrol agents' questions.
79 (July 14, 2017)	The agent greets Bressi and asks him to state his citizenship. Exhibit N [BRE0399_14JUL2017.mp4]. Bressi refuses to answer. The agent speaks to his supervisor, and at one minute and 55 seconds, directs Bressi to leave the checkpoint. Bressi remains at the checkpoint for 30 more seconds to yell at the agents before leaving.	Before the agent spoke to Mr. Bressi, a second agent behind him clearly stated, "This guy always does this. He's a U.S. citizen." The agent then told Mr. Bressi, "I need to establish your citizenship, and then you can go, sir," despite his colleague having just told him the driver was a U.S. citizen. Mr. Bressi can then be heard stating that the agent has put a stop strip in front of his vehicle. Mr. Bressi asked why he was being detained, and the agent responded it was an immigration inspection, even though he had just been informed Mr. Bressi was a U.S. citizen. A supervisor can then be seen motioning for the agents to remove the spike strip. Bressi then asked the supervisor about the agent's training, but at no point was yelling.
80 (August 1, 2018)	Bressi arrives 29 seconds into the video. Exhibit N [BRE3995_01AUG2018.mp4]. The agent greets Bressi before Bressi asks the agent whether he has assaulted anyone. The agent asks Bressi whether he is a U.S. citizen. Bressi refuses to answer but presses his horn. Forty-six seconds into the video, the agent tells Bressi he can leave the checkpoint. Bressi remains there for 20 seconds to yell at the agent.	Mr. Bressi recognizes and explicitly identifies the agent at primary inspection as he approaches. The "greeting" the agent makes is "How you doing, Terry?" (00:28). Mr. Bressi asks the agent if he has assaulted anyone today, and the agent repeatedly asks Mr. Bressi, whom he has just greeted by first name, whether he is a U.S. citizen.

<p>81 (December 23, 2018)</p>	<p>The agent asks Bressi to lower his window. Exhibit N [BRE3998_23DEC2018.mp4]. Bressi refuses. The agent asks Bressi to state his citizenship. Bressi refuses to answer. The agent continues to ask Bressi whether he is a U.S. citizen until other agents working the checkpoint walk over to the vehicle and look inside. One minute and 37 seconds into the video, agents tell Bressi to leave the checkpoint.</p>	<p>An agent can be seen shining his flashlight in Mr. Bressi’s truck bed before anyone spoke to him. Approximately one minute in, Mr. Bressi asked whether he was being detained and the agent stated that he was.</p>
<p>82 (May 15, 2019)</p>	<p>The agent identifies the purpose of the checkpoint and asks Bressi to state his citizenship. Exhibit N [BRE4001_15MAY2019.mp4]. Bressi refuses to answer, argues with the agent, and presses his horn. One minute and 22 seconds into the video, supervisors told the agent that the driver was Bressi and that he should be waved through. At one minute and 32 seconds, the agent tells Bressi he can leave the checkpoint. Bressi remains for a few seconds to yell at the agent.</p>	<p>The agent was visibly exasperated, rolling his eyes and saying “Oh, really?” as soon as Mr. Bressi asked whether he was free to go. The agent then said, in a bored and dismissive tone, “you’re not free to go, because you have to answer a question for me.” At 01:22, another agent can clearly be heard in the background saying “It’s Bressi,” several times and an agent says “Oh, okay.” The original agent returned to Mr. Bressi’s window and said, “Everybody else knows you’re Terry Bressi, they say that now you’re free to go.”</p>

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FACTS 68-78:

Description of the April 10, 2017, incident. This description is disputed. The federal defendants’ version does not mention that the agent asked Mr. Bressi to pull over to secondary before any attempt to conduct an immigration inspection or ask Mr. Bressi any other questions. After he did eventually ask whether Mr. Bressi was a

1 United States citizen and Mr. Bressi asked if he was free to go twice, the agent
2 informed him, “You’re free to go when you answer my question.” Notably, this was
3 *after* the poster with Mr. Bressi’s picture identifying him as a U.S. citizen had been
4 hanging in the checkpoint for approximately one year. Mr. Bressi respectfully
5 suggests that the Court review the video of this encounter rather than relying on the
6 federal defendants’ summary.

7 ADDITIONAL FACTS

8 83. At least as early as 2008, agents regularly assigned to the SR-86
9 checkpoint were aware of Mr. Bressi’s identity and citizenship. *See, e.g.*, Fed. Exh.
10 N, 3/3/08; 11/26/08; 8/14/08; 9/25/11; 3/29/13; 4/30/14; 3/26/16; 7/14/17, 8/1/18.
11 This is a regular occurrence, including in videos where the agents do not explicitly
12 ask and insist on an answer to the citizenship question.

13 84. During 2016, Tucson Station agents explicitly identified Mr. Bressi as
14 an “uncooperative” U.S. citizen in posters displayed inside the checkpoint (one of
15 them for at least a year) and in “muster” slides presented at briefings for agents
16 beginning their shift. (Plaintiff’s Exs. #1, p. 16; 6; 12; and 28)

17 85. Following an encounter between Mr. Bressi and agents at the
18 checkpoint in 2014, agents exchanged e-mails about their hopes of bringing criminal
19 charges against Mr. Bressi for his behavior at the checkpoint, stating “to make the
20 charge stick though, we need an assault of some sort . . .” and looking for ways “we
21 might be able to charge Bressi.” (Plaintiff’s Ex. #26) They referred to communicating
22 with the U.S. Attorney’s Office as “moving in the right direction.”

1 86. The Border Patrol uses the SR-86 checkpoint not only to intercept
2 undocumented individuals and contraband, but to collect intelligence for use in
3 ongoing investigations. (Plaintiff’s Ex. #1 at 67) (“So the agent is now putting out
4 some information, which results in Intelligence to assist in . . . further down the day
5 or wait to identify this suspected smuggler”); *Id.* at 68 (images of suspected smugglers
6 captured at checkpoints shared with “Intelligence department”); *Id.* at 24 (information
7 from DEA-owned license plate readers at the checkpoint shared with “Tucson Sector
8 Intelligence Unit”).

9 87. When the Tucson Station created a “response plan” for possible
10 checkpoint protests, they included a section specifically about Mr. Bressi, which
11 included mention of his practice of videotaping interactions. (Plaintiff’s Ex. #29)

12 88. When Mr. Bressi was arrested at the checkpoint on April 10, 2017, the
13 supervising agent, Eduardo Fuentes, was observed to be “expressing some kind of
14 pleasure at the fact that Mr. Bressi was getting charged with a crime” and was
15 laughing at him. (Plaintiff’s Ex. 30, pp. 80-81)

16 89. Refusing to drive into the secondary inspection area was not Pima
17 County Sheriff’s Deputy Ryan Roher’s reason for arresting Mr. Bressi on April 10,
18 2017. (Plaintiff’s Ex. #30, p. 66)

19 90. Border Patrol Agents Eduardo Fuentes and Edmundo Lopez
20 participated directly in Deputy Ryan Roher’s arrest of Mr. Bressi on April 10, 2017.
21 (Plaintiff’s Ex. 31)

1 The following facts stated in Plaintiff's Statement of Undisputed Facts in
 2 Support of Motion for Partial Summary Judgment (Doc. 105) are also relied upon in
 3 this opposition to the federal defendants' motion for summary judgment. Rather than
 4 attach duplicate copies of all the exhibits, Plaintiff will refer to the previously filed
 5 Statement of Facts and accompanying exhibits, which are hereby incorporated here
 6 by reference:

7 Plaintiff's Fact #8: The United States Border Patrol states on its public website,
 8 "Traffic checks are conducted on major highways leading away from the border to
 9 (1) detect and apprehend illegal aliens attempting to travel further into the interior of
 10 the United States after evading detection at the border and (2) to detect illegal
 11 narcotics." (**Ex. 2**)

12 Plaintiff's Fact #10: For the four years for which the Border Patrol has
 13 provided statistics, the number of immigration-related vs. narcotics-related arrests
 14 (individual people), and the number of immigration-related vs. narcotics-related
 15 events (encounters, which could yield multiple arrests) and total arrests (including
 16 immigration, narcotics, and other non-immigration) at the SR-86 checkpoint are as
 17 follows: (**Ex. 4**)

	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

1 Plaintiff's Fact #12: Customs and Border Protection publishes yearly
2 enforcement statistics on its website. It reports statistics for various types of
3 encounters and enforcement actions, arrests of undocumented people with criminal
4 records, gang affiliated enforcement, and drug seizures
5 (<https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>) as well as more
6 detailed demographic information for undocumented people apprehended in the
7 Southwest border region ([https://www.cbp.gov/newsroom/stats/southwest-land-
8 border-encounters-by-component](https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-component)). Out of all this published data, the only report on
9 checkpoints is in the "drug seizures" section, where the agency reports "Monthly U.S.
10 Border Patrol Nationwide Checkpoint Drug Seizures." (**Ex. 5**).

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

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

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

1 Plaintiff's Fact #17: Canines are regularly used in the area of the checkpoint
2 known as "pre-primary," before a driver has an initial encounter with any agents.
3 (Ex. 1: p. 35)

4 Plaintiff's Fact #19: The Border Patrol operated a pilot program for several
5 months where it installed agency-owned automatic license plate readers at the SR-86
6 checkpoint. (Ex. 1: p. 32)

7 Plaintiff's Fact #20: Drug Enforcement Agency-owned license plate readers
8 operate in the immediate vicinity of, but outside what the agency considers to be the
9 official footprint of, the checkpoint. (Ex. 1: pp. 22-23; Ex. 6: No. 4) The Border
10 Patrol has acknowledged the presence of this system in its application for an
11 encroachment permit for the checkpoint. (Ex. 3: USA-0059).

12 Plaintiff's Fact #23: During this initial encounter, agents are trained to look
13 both for signs that the occupants may not be United States citizens or authorized to
14 be present, and for indications of federal criminal activity of any kind. (Ex. 9: Slide
15 18; Ex. 10: p. 10.1.1-5 (USA-02270)) ("the basis of a primary checkpoint inspection
16 is the decision to allow individuals to proceed or refer them to secondary inspection"
17 based on "immigration purposes," "Title 21 authority in conjunction with reasonable
18 suspicion" or "[r]easonable suspicion for any federal crime and state violations in
19 some jurisdictions.").

20 Plaintiff's Fact #25: Agents may refer a vehicle to a secondary inspection area
21 because the agent has reasonable suspicion that the occupant is engaged in non-
22 immigration-related criminal activity. (Ex. 9: Slide 18); Ex. 8: Instructor Guide

1 Lesson 3, pp. 1-13 (USA 0418); **Ex. 10:** p. 10.1.1-4 (USA-02269) (emphasizing
2 secondary referral is appropriate based on Title 21 authority or “[r]easonable
3 suspicion for any federal crime and state violations in some jurisdictions”).

4 Plaintiff’s Fact #38: Operation Stonegarden deployments were directed and
5 approved by Customs and Border Protection/Border Patrol. (**Ex. 15:** p. 17) The
6 arrangement required the Pima County Sheriff’s Department to “coordinate” with the
7 relevant Border Patrol stations to “conduct joint patrols” and “conduct joint
8 operations.” (**Ex. 16:** USA – 289-90)

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

16 Dated this 26th day of July 2021.

17
18 Ralph E. Ellinwood, Attorney at Law, PLLC
19 Knight Law Firm, PC

20
21 /s/ Amy P. Knight
22 Ralph E. Ellinwood
23 Amy P. Knight
24 Attorneys for Plaintiff
25

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July 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

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