

May 2, 2017

Mr. Mark Hotchkiss
Ms. Racheal Gigar
Deputy County Attorney
Pima County Attorney's Office
32 N. Stone Avenue, #1400
Tucson, Arizona 85701

**RE: State vs. Terrence Harry Bressi
Case No. CR17-706020-MI**

Dear Ms. Gigar and Mr. Hotchkiss,

I am writing to both of you to request that you dismiss this case with prejudice. The next court date in this case is the first Case Management Conference on June 7, 2017. Mr. Bressi should never have been cited for obstruction of a highway because, among the many reasons discussed below, the simple facts of this case do not support the statutory elements of the offense. An almost identical case against a similarly situated defendant (*State v. John Pollak*, CM-2017000078) was dismissed by your office in Ajo Justice Court in April of this year.

Mr. Bressi is a University of Arizona employee in charge of the telescope operations at Kitt Peak Observatory. He has been driving through the “temporary” immigration checkpoint on State Route 86 for the last 10 years. Most of the people who work at the checkpoint (including Deputy Roher) know who Mr. Bressi is. Mr. Bressi has been harassed and targeted by federal and state law enforcement because he chooses to exercise his right to remain silent in the face of questioning from federal officers and because he records his encounters with the officers at these checkpoints. In fact, the Department Homeland Security has tried and failed to get Mr. Bressi fired from his employment because of his choice to exercise his First and Fifth Amendment rights at the roadblock.

Pursuant to A.R.S. Section 13-1906(A)(1), a person commits obstructing a highway or other public thoroughfare if the person “[h]aving no legal privilege to do so, recklessly interferes with the passage of any highway or public thoroughfare by creating an unreasonable inconvenience or hazard.” In a nutshell, Mr. Bressi is being charged with this offense because he asserted his constitutional right to remain silent in the face of interrogation. In this case, as in all prior instances of arriving at this

checkpoint, Mr. Bressi came to a stop at the stop signs of the checkpoint. At this point, he was legally the subject of a seizure. CBP Agent Frye approached the vehicle, informed Mr. Bressi that he was at an immigration checkpoint. Mr. Bressi remained silent and the agent instructed him to pull over to secondary. Mr. Bressi declined to do so and asked the agent to let him know when he was free to leave. Agent Frye said he could leave when Mr. Bressi answered his question. Agent Frye then called Deputy Roher over. Deputy Roher ordered Mr. Bressi to answer the federal immigration agents question or pull over to secondary. Mr. Bressi declined to do either, asked if Deputy Roher was now enforcing federal law, and asked for the officers to state the grounds for any further detention. Deputy Roher then suddenly told Mr. Bressi he was free to leave. Mr. Bressi began pulling away when, in the rear view mirror, he saw Deputy Roher running to his vehicle. He pulled over to the side of the road to wait for the deputy to make contact with him. Mr. Bressi was subsequently arrested and cited. The entire contact at the checkpoint between Mr. Bressi, Agent Frye and Deputy Roher lasted just over two minutes.

Mr. Bressi did not violate state law. The entire encounter lasted two minutes. He was the one stopped by federal agents and then Deputy Roher, he had a legal privilege to remain silent and not be further detained by federal agents unless they had suspicion to do so. "The Supreme Court has repeatedly held that refusal to answer law enforcement questions cannot form the basis of reasonable suspicion." See *Florida v. Bostick*, 501 U.S. 429, 437 (1991). Per CBP's own guidelines, "the best course of action is simply to allow the uncooperative driver to pass, if no suspicion is raised (refusing to answer a question is not enough to raise suspicion)" USCBP Guidance on Uncooperative Motorists. "A subject's 'bad attitude' or refusal to answer questions, without more, does not constitute 'reasonable suspicion' and does not justify 'detention'" U.S. Customs and Border Protection, Law Bulletin for Border Patrol Agents, San Diego Sector, 2012.

If anyone exceeded their "legal privilege" it was Deputy Roher. Deputy Roher is not a federal immigration officer though he attempted to act as one in this case. His presence at the roadblock was due to his participation in Operation Stonegarden which ostensibly provides ancillary law enforcement support to federal law enforcement authorities in the southern border region. In less than 90 seconds after being stopped by Agent Frye, Deputy Roher approached defendant, demanded defendant's cooperation with Agent Frye and told defendant he was the one detaining him despite defendant already being detained by Agent Frye. Deputy Roher then "allowed" Mr. Bressi to leave the roadblock a short time later without answering Agents Frye's questions. Deputy Roher then followed defendant a short distance down the road before arresting him. Deputy Roher's participation in a federal immigration roadblock while actively enforcing state law in this manner violated the Supreme Court restrictions on roadblock operations which prohibits general law enforcement roadblocks. *City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). ("We have also upheld brief, suspicionless seizures of motorists at a fixed Border Patrol checkpoint designed to intercept illegal aliens ... at a sobriety checkpoint aimed at removing drunk drivers from the road... In none of these cases, however, did we

indicate approval of a checkpoint program whose primary purpose was to detect evidence of ordinary criminal wrongdoing.") Accordingly, Deputy Roher's involvement in this encounter transformed the stop into a generalized roadblock which is specifically prohibited by the constitution.

In addition to the almost identical case against Mr. Pollak which your office dismissed in April, Mr. Bressi has been threatened with this citation before. On March 26, 2016, under as similar set of circumstances the following recorded exchange took place between Deputy McMillan and Mr. Bressi:

Deputy McMillan: "I understand that you have issues with the federal checkpoint and their authority to stop vehicles without probable cause on an Arizona roadway versus a state granted authority through AZ POST like a sheriff or municipal officer. OK, I get that. So as far as the stopping back there, they detained you."

Defendant: "Yes they did."

Deputy McMillan: "They told you, you were not free to leave."

Defendant: "Yes."

Deputy McMillan: "So therefore I'm not, I know that they didn't like that you blocked back their road. I don't necessarily like it but because they told you were not free to leave I don't think that would give me any probable cause to arrest you for obstructing a public thoroughfare because you were told not to leave and..."

Defendant: "Yes and that's my analysis as well."

In short, Mr. Bressi was being detained against his will and had a legal right to refuse to answer questions or consent to further suspicionless seizure. For these reasons, I am requesting that your office dismiss this case with prejudice. Please feel free to contact me to discuss this matter further or if you need additional information.

Respectfully,

Adam N. Bleier

Attorney for Mr. Bressi

AB/mrm